

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

COUNTY OF LAKE,

Petitioner,

VS .

No. T14-0041

WISCONSIN CENTRAL LTD., a DELAWARE)
CORPORATION; VILLAGE OF GRAYSLAKE;)
and the STATE OF ILLINOIS DEPARTMENT)
OF TRANSPORTATION, application for an)
extension of operating authority as a)
common carrier.)

Respondents.

Petition for the construction of a new) grade separation to replace the) existing Washington Street (Lake) County Highway 45) highway-rail grade) crossing of the Wisconsin Central) Limited tracks located in Grayslake,) Lake County, Illinois; designated as) AARDOT # 689 726 P, railroad milepost) 46.47; and assigning project costs to) the petitioner and respondents, and) authorizing the Grade Crossing) Protection Fund to pay a portion of) the costs thereof.

Chicago, Illinois
December 16, 2014

Met pursuant to notice at 10:00 a.m.

BEFORE:

LATRICE KIRKLAND-MONTAQUE, Administrative Law
Judge.

1 APPEARANCES:

2 MR. GUNNAR B. GUNNARSSON

18 North County Street

3 Waukegan, Illinois 60085

Appearing on behalf of the County of Lake;

4

MR. THOMAS HEALEY

5 17641 South Ashland Avenue

Homewood, Illinois 60430

6 Appearing on behalf of the Wisconsin Central;

7 MR. DANIEL POWERS

527 East Capitol Avenue

8 Springfield, Illinois 62701

Appearing on behalf of Staff.

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SULLIVAN REPORTING COMPANY, by

22 Tracy L. Overocker, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Examiner</u>
Alfred Giertych	14	60	
Michael Pine	72	87	
Steve Heath	94	106	
Brian Fairwood	108		
Daniel Powers		130	127

E X H I B I T S

<u>Petitioner</u>	<u>For Identification</u>	<u>In Evidence</u>
A through D, F through BB	149	60
F, G, H and I		149

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No. T14-0041
4 for hearing. This is in the matter of the County of
5 Lake, petitioner, versus Wisconsin Central Limited,
6 the Village of Grayslake and the Illinois Department
7 of Transportation as respondents.

8 May I have appearances, please,
9 starting with Lake County -- the County of Lake.

10 MR. GUNNARSSON: Good morning, your Honor, and
11 thank you. Gunnar Gunnarsson, G-u-n-n-a-r-s-s-o-n is
12 the last name. Lake County State's Attorney's Office
13 representing the County of Lake, 18 North County
14 Street, Waukegan, Illinois 60085 and my telephone
15 number is (847) 377-3050.

16 Just for the record, incidentally, we
17 have Mr. Al Giertych, who is the county
18 representative, assistant director -- assistant
19 superintendent, of the County Highway Department.

20 Also, we have three witnesses --
21 additional witnesses, Steve Heath and Mike Pine from
22 Patrick Engineering and Brian Fairwood of

1 TranSystems.

2 JUDGE KIRKLAND-MONTAQUE: Thank you.

3 Wisconsin Central.

4 MR. HEALEY: Good morning, your Honor. Thomas
5 Healey, H-e-a-l-e-y, on behalf of Respondent,
6 Wisconsin Central, Limited. My office address is
7 17641 South Ashland Avenue, in Homewood, Illinois
8 60430. My phone number is (708) 332-4381.

9 I do not anticipate presenting any
10 witnesses today, although, obviously, I would reserve
11 the right to cross-examine the County witnesses.

12 JUDGE KIRKLAND-MONTAQUE: And Staff?

13 MR. POWERS: Daniel Powers, Illinois Commerce
14 Commission, 527 East Capitol Avenue, Springfield,
15 Illinois 62701. The phone is (847) 516-0733.

16 JUDGE KIRKLAND-MONTAQUE: Thank you. Okay.
17 Mr. Gunnarsson, since this is your petition, I will
18 allow you to begin with your arguments and -- in
19 fact, why don't you summarize the arguments, the
20 purpose of today's hearing.

21 MR. GUNNARSSON: Yes, thank you, Judge. So
22 this case before you, your Honor, comes on our motion

1 for the determination by the Commission pursuant,
2 actually, to the agreement that the County has with
3 the Wisconsin Central that we can't agree on the
4 allocation of the costs to the Railroad for this
5 project that the Commission would determine. We've
6 agreed also that -- it's Federal Regulation
7 23 CFR 646.210 that controls the decision on this
8 because federal funds are devoted to the project.
9 That regulation states in pertinent part under B3 on
10 projects for the elimination of existing grade
11 separations are deemed to generally -- forgive me,
12 it's actually Item 3, forgive me for that -- on
13 projects for the elimination existing grade crossings
14 in which active warning devices are in place or
15 ordered to be installed by state regulatory agency,
16 the Railroad share of the project costs shall be
17 5 percent, so that's the controlling language of the
18 regulation.

19 On C -- Subsection C of that same
20 regulation, your Honor, we see that the required
21 Railroad share of the costs under B3 shall be based
22 on the costs for preliminary engineering, right of

1 way and construction within the limits described
2 below and described below under Subsection 1
3 essentially talks about the touchdown to touchdown
4 limits where you bring the road down from the
5 existing theor- -- existing profile to, in this case,
6 below the tracks and then bring it up again. We'll
7 show on one of the exhibits which has already been
8 marked A3 where those touchdown points are, but that
9 basically governs what the limitation is for the
10 project; but given those limits, that 5 percent under
11 B3 is applied to all of the project costs and one of
12 the reasons -- by no means the only reason I say
13 this, but summaries of the arguments that we've made
14 in our briefs -- the County has -- is that that
15 5 percent figure was promulgated by the Secretary of
16 Transportation under the authority of an enabling
17 statute that give -- gave to the Secretary the
18 authority to allocate to the Railroad in a grade
19 separation project, to eliminate an existing at-grade
20 separation, the share of the Railroad's costs based
21 on the benefit to the Railroad.

22 The Secretary determined 5 percent is

1 a fair sort of allocation, so the Railroad has
2 already been given a substantial discount in its
3 share of project costs, 120th of their costs based on
4 the Secretary's determination of what would be
5 essentially the benefit to the Railroad. So it's
6 unquestionably true that the Railroad does benefit
7 from this project just as the highway and the
8 authority and the public benefits from it. The
9 highways and railroads exist side by side where they
10 intersect and the problems caused by their
11 intersections, the dangers at the intersections at
12 those crossings and the traffic delays are as much
13 due to the presence of the Railroad as to the
14 presence of the highway, so they -- they realize a
15 benefit and they have an obligation to share in the
16 costs. The Secretary said that share is 5 percent.

17 The language that Mr. Healey has
18 focused on in his argument and no doubt will focus on
19 again is the language under C1 -- or, actually, the
20 leading part of C which is, shall be the costs under
21 B3 shall be based on the costs for preliminary
22 engineering, right of way and construction within the

1 limits described below.

2 Those terms generally describe the
3 three phases of a grade separation project. They are
4 not meant to be limiting in terms of only certain
5 types of costs are to be calculated. Preliminary
6 engineering as elsewhere defined in the regulations,
7 basically all engineering and all planning that leads
8 to the development of the project, where it should
9 go -- whether it should go ahead and how it should be
10 designed; right of way is, you know, self-evident,
11 you've just got to -- you've got to get the rights --
12 the rights for the project and the third part,
13 construction, involves everything that's included
14 within building the project. That includes having an
15 engineer on site to work with the contractor, it's a
16 complex project, you have to. It would be negligent
17 not to have a project engineer, that's the Phase 3
18 cost item engineering ben- -- the Railroad contests.

19 The Railroad contests the Phase 2
20 costs, those are the design documents and -- without
21 that, of course, you don't have a project.

22 The Railroad also contests utility

1 relocation costs. We're bringing the road underneath
2 the tracks. You cannot leave the utilities hanging
3 in the air without relocation of the utilities. Down
4 below with the road, there's no project. So it's
5 also an essential component of the project.

6 Rights-of-way, I'm not sure whether
7 the Railroad has abandoned that as a contest or still
8 contested and in their Answers to Interrogatories
9 they were challenging that and in Mr. Healey's brief,
10 he didn't challenge them, so if they are -- I'm
11 assuming they're still challenging that. A fair
12 amount of the rights-of-way that are being acquired
13 are for the temporary roadway and the temporary
14 railroad, actually. Without the temporary roadway --
15 Washington Street -- is a major east-west traffic
16 artery in Lake County -- would be shut down and the
17 public could not stand for that -- could not stand
18 for having Washington Street shut down during a
19 two-year project, so it's a necessary part of the
20 project having the temporary roadway in order to
21 maintain existing traffic.

22 And, incidentally, the Federal Highway

1 Authority also admonishes public agencies to impact
2 traffic with these grade separation projects in the
3 least degree possible and this is certainly part and
4 parcel of that.

5 So I think generally two things: One,
6 the regulation says clearly it's 5 percent of the
7 project costs, whatever goes into the project; but
8 even if one wants to cherry pick and say, Oh, no
9 preliminary engineering is meant to be a limiting
10 term and right-of-way is somehow limiting
11 construction, those are the three parts of the
12 project anyway -- three phases and everything that
13 you will hear about today, all the contested items,
14 Phase 2, Phase 3 engineering, the utility relocation,
15 the Metra force account work, you'll hear some
16 testimony, your Honor, about the sidewalk and bike
17 path and then the right-of-way are -- all fit within
18 one of those three stages. So either way that you
19 would look at it, your Honor, these costs are part of
20 the project costs, again, which the Railroad is to
21 pay 5 percent and, again, they've already been
22 discounted to 25 percent for its benefit. So for

1 them to say, Oh, no, only those costs that benefit
2 the Railroad would give them a double discount is
3 substantially -- substantially underestimate the
4 costs against which the Railroad's mandatory
5 5 percent share is applied.

6 So today, I will essentially present,
7 by way of prove up, these line items with
8 Mr. Giertych who is the assistant County engineer,
9 get the overview of the project and each of these
10 exhibits and I do not want to belabor yourself, your
11 Honor, nor the Commission with extensive testimony,
12 it's more on the nature of proving this up; but for
13 each of those real contested issues, I will also have
14 one of the additional witness hear to also testify
15 about the more details of that, either Mr. Steve
16 Heath, who is more of the Railroad side of the
17 project from our end, the County's end, Mike Pine to
18 talk about other areas of the design and the project
19 and then Brian Fairwood who, with TranSystems, sort
20 of the project management supervisor outside project
21 management supervisor by the County who will talk
22 about the summary of costs which will be the central

1 exhibit that we were talking about during the
2 testimony; and with that, Judge, you've gotten our
3 briefs on the legal issues and the authorities that
4 we've come up with to support our argument on that.
5 We would be prepared to present testimony.

6 JUDGE KIRKLAND-MONTAQUE: Okay. Why don't you
7 have your witnesses stand and raise your right hand.

8 (Witnesses sworn.)

9 JUDGE KIRKLAND-MONTAQUE: Do you want the
10 witness to sit here? Which would be easier for you?

11 MR. GUNNARSSON: It would be easier for me if
12 Mr. Giertych, who is going to be our main witness, is
13 to sit here; but when we call the other witnesses,
14 since Mr. Giertych will be here is also counter
15 representative, I would ask that the witness go.

16 JUDGE KIRKLAND MONTAQUE: Okay.

17 MR. GUNNARSSON: With your leave to
18 occasionally point to the blowup, what's been marked
19 Exhibit A3 on the easel before you, we might move it
20 a little bit closer so your view of it is a little
21 clearer, the intent was to make it in a fashion that
22 you could see what we're talking about.

1 JUDGE KIRKLAND-MONTAQUE: I can see it from
2 here. Okay.

3 MR. GUNNARSSON: So we would start with
4 Mr. Giertych then, your Honor.

5 JUDGE KIRKLAND-MONTAQUE: You may. Go ahead

6 ALFRED GIERTYCH,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY

11 MR. GUNNARSSON:

12 Q Mr. Giertych, can you please state your
13 name for the record and spell your last name?

14 A My name an Alfred Thomas Giertych, Jr. My
15 last name is G-i-e-r-t-y-c-h.

16 Q And, Mr. Giertych, what -- who is your
17 employer?

18 A Lake County. The Lake County Division of
19 Transportation.

20 Q And what is your position with Lake County?

21 A I'm the assistant county engineer.

22 Q And generally describe what your duties are

1 in your current position?

2 A Primarily, my duties are in the area of
3 program management, executing the five-year capital
4 program.

5 Q What is your engineering education?

6 A I have a bachelor's in science and civil
7 engineering from the University of Illinois.

8 Q Are you licensed Mr. Giertych.

9 A Yes, I am. I'm licensed in the State of
10 Illinois and the State of Wisconsin.

11 Q How long have you been the assistant County
12 engineer?

13 A Approximately 15 years.

14 Q Now, Mr. Giertych, are you familiar with
15 the County of Lake's Washington Street Grade
16 Separation Project?

17 A Yes, I am.

18 Q And, generally, can you describe for the
19 Judge what that project entails?

20 A The current operations on Washington Street
21 exceed the capacity of the roadway. So with the
22 current traffic already exceeding capacity, future

1 anticipated traffic is going to make that condition
2 worse. So the intent -- the purpose and the need of
3 the project is to provide an efficient transportation
4 corridor along Washington Street that's safe and not
5 congested.

6 Q And in what way does this project alleviate
7 the problems that you've mentioned with regard to the
8 traffic flow?

9 A With regard to the traffic flow, it does
10 several things. We're adding an additional through
11 lane. The current section is one lane in each
12 direction with intermittent left turn lanes. The new
13 section will be two through lanes in each direction
14 with intermittent left turn lanes that will add
15 capacity to the roadway itself.

16 In addition, we are going to be
17 creating a grade separation at the railroad, which
18 will eliminate the delays due to passing trains and
19 improve the flow of traffic. Currently, there is an
20 excess of 50 trains a day that go through that
21 location.

22 Q And is there any sort of a safety concern

1 that the County has with respect to the existing
2 intersection? And if so, what is that concern?

3 A Well, the proposed section will be safer in
4 that we will be eliminating the grade crossing of the
5 railroad and the roadway and also there is an
6 existing bike trail on the south side. And by
7 eliminating that potential conflict, it's inherently
8 safer to separate those movements. So in other
9 words, the pedestrian, bicycle and automobile
10 movements will now be completely separate from the
11 railroad, so there will be no opportunity for a crash
12 or an accident of any kind.

13 Q And I'd like to now go through some of the
14 exhibits that you have before you, Mr. Giertych.
15 Let's start with A1 very briefly.

16 Can you identify that document?

17 A That's a general location map of where the
18 project is located in Lake County.

19 Q A2, can you identify that exhibit?

20 A These are photographs in all four corners
21 of the existing crossing of the railroad by
22 Washington Street with the existing section.

1 Q A3 is a photocopy of the bigger exhibit
2 that you have on the easel; is that correct?

3 A Yes, it is. This is an aerial photograph
4 depicting the proposed improvements and, also, there
5 is a profile view in the bottom center which shows
6 what the elevation profile of the existing and the
7 proposed roadway will be at the railroad.

8 Q And, Mr. Giertych, by leave of the Judge,
9 could you approach the blowup and if it is at a good
10 position where we can see it all, Judge, I'm going to
11 ask you a couple questions about that exhibit.

12 Can you show where the -- are you
13 familiar with the term "touchdown to touchdown
14 points" in a grade separation project?

15 A Yes.

16 Q And what is your understanding of that
17 term?

18 A The touchdown points would the point at
19 which the proposed roadway profile would have to
20 depart from the existing roadway profile to create a
21 grade separation.

22 Q Now, looking at A3, can you show the

1 western touchdown point and then the eastern
2 touchdown point?

3 A This exhibit identifies a western touchdown
4 limit at Station 104.75 which corresponds to the
5 point at which the proposed road profile, which is
6 shown in purple, begins to depart from the existing
7 road profile to create the grade separation.

8 Q And the east touchdown point, Mr. Giertych?

9 A And the corresponding eastern point would
10 be the point at which the proposed road profile,
11 again, approaches back up and meets the existing road
12 profile.

13 Q Also, on this exhibit it shows -- appears
14 to be a road in purple, what is that indication?

15 A The road in purple is -- this is a
16 temporary roadway that would serve as a runaround
17 during construction of this grade separation. So
18 there's considerable excavation work that needs to be
19 done to create this new road profile. This is a
20 temporary road that will be built so that we can
21 route traffic in both directions, one lane in each
22 direction during construction so that we don't have

1 to close the roadway.

2 Q Also, on this exhibit it shows Metra
3 platform and it appears to be some work by the Metra
4 platform. What is -- what does that work entail?

5 A This is an existing Metra commuter station.
6 Currently, you access that off of Washington Street.
7 The station itself is back in this portion of the
8 aerial and the existing platform currently abuts the
9 existing railroad line.

10 During construction, it will be
11 necessary to construction a shoofly for the railroad
12 so that the railroad can also bypass the construction
13 area and enable us to build that bridge. So the
14 temporary work that's necessary at the Metra station
15 is to construct a temporary platform that will allow
16 commuters to access that temporary alignment of the
17 railroad.

18 Q So in order to have the temporary rail
19 shoofly, is it necessary then to have modifications
20 to the Metra platform?

21 A The modifications to the Metra platform are
22 necessary because we're building a shoofly. We need

1 to put the train on a new alignment.

2 Q So that the commuters can access it?

3 A In order to maintain commuter service, we
4 need to build a temporary platform.

5 Q Also on this exhibit, I see some
6 indications in red above Washington Street.

7 What is -- what does that indicate?

8 A This red line represents a sidewalk that's
9 going to be built for pedestrian access through the
10 corridor on the north side and it will be connecting
11 up the subdivisions that are to the west on the north
12 and south side of Washington Street and also on the
13 north side and the south side east of Lake Street to
14 the Metra station.

15 Q And is there currently a sidewalk in
16 existence by Washington Street?

17 A Not on the north side, no.

18 Q And why are we -- why does the project
19 include the sidewalk being installed and then also
20 brought underneath the rail tracks?

21 A Well, it was identified fairly early on
22 during the Phase 1 study process that -- at some of

1 the public meetings that there was an interest by the
2 public being able to access that Metra facility by
3 foot, by -- as pedestrians. It avoids the need to
4 double commute. In other words, if you live in one
5 of these subdivisions, you don't have to drive your
6 car there, you can walk, if you choose to.

7 So -- also, our non-motorized travel
8 policy requires us to look at all moods of
9 transportation through a transportation corridor.
10 So, in other words, in addition to automobile
11 traffic, we look at pedestrian traffic and bicycle
12 traffic and we do what we can to accommodate those
13 when it's possible.

14 Q And by -- you mentioned transportation
15 corridor, what do you mean by that term?

16 A By transportation corridor what we mean is
17 we don't view our rights-of-way as just a highway
18 corridor, it's a transportation corridor. We need to
19 move people in all moods of transportation. People
20 choose to walk or have a need to walk, use a bicycle,
21 use an automobile, facilitate the use of mass
22 transit, this all comes together in an integrated

1 strategy of transportation.

2 Q And having the sidewalk installed to
3 provide a way for people to travel by foot to the
4 Metra station; is that correct?

5 A Yes.

6 Q Without that bike path, where would the --
7 if someone wanted to go from the east across the
8 tracks to get to the Metra station, where would they
9 have to walk?

10 A You said bike path, I think --

11 Q I'm sorry, the sidewalk. Forgive me.
12 We'll get to the bike path in a moment.

13 A Well, currently they -- if they were on the
14 north side west, they could -- there's no facility
15 here, so they really have no way unless they cross
16 the road and use the multi-use path or the bicycle
17 path that currently exists on the south side, but
18 it's not readily available. There's, I think, one
19 crosswalk at the side street just to the west.

20 Q And from the east without the sidewalk, how
21 would pedestrians be able to cross over to the Metra
22 station?

1 A It would be a similar situation where there
2 is an existing multi-use trail here, so they could
3 access that trail use the trail.

4 Q And that trail that you mentioned, is that
5 the bike path?

6 A Yes.

7 Q Is there a reason why the County wants to
8 have a separate sidewalk from the bike path?

9 A To accommodate the pedestrian traffic.

10 Q Is there any sort of safety reason to do
11 that?

12 A Yes. We don't want people walking in the
13 road or crossing at the wrong location on the
14 roadway, so it's a safer and it's a more efficient
15 way to handle pedestrian traffic.

16 Q Now, you did mention the bike path. Can
17 you indicate where that's shown on this exhibit,
18 Mr. Giertych?

19 A The bike trail within the limits of
20 construction are shown in blue. So this is the
21 proposed bike trail, there is an existing multi-use
22 trail, it's a Village of Grayslake facility that

1 currently stops just short of the right-of-way of the
2 railroad on either side and we're going replace that,
3 reconstruct it with a new bike trail that will follow
4 the grade separation, new grade profile grade
5 separation so it will be separated from the railroad.

6 Q So in order to maintain the bicycle traffic
7 along the south side of Washington Street, is it
8 necessary to bring the path there underneath the
9 tracks as well?

10 A This will be a much safer condition than
11 currently exists and it will also be more efficient.
12 It will be a 15-foot wide path that meets all the
13 standards.

14 Q Now, for the temporary roadway, the
15 sidewalk/bike path, is it necessary to acquire
16 rights-of-way for all of those a construction items,
17 Mr. Giertych?

18 A There's a variety of reasons why we
19 acquired the right-of-way. The temporary roadway
20 runaround is certainly a major reason. We also
21 needed to acquire an easement for the railroad
22 shoofly. We are also acquiring temporary easements

1 in some of these locations for temporary grading and
2 then some permanent easements and actual acquisitions
3 for the permanent grade change that takes place in
4 the vicinity of the grade crossing itself.

5 There's also, as you can see on this
6 display, several different utilities that will be
7 relocated from their current position adjacent to the
8 two-lane road. They'll be taken further out where
9 they can match up grade-wise and cross the railroad
10 without being underneath the roadway.

11 Q Is the relocation of the utilities a
12 necessary component of this grade separation project?

13 A Yes, it is. All the utility relocations
14 are doing conflicts with the proposed construction
15 and facility.

16 Q If you were to bring the road down with
17 this potential excavation that you already described,
18 if the utilities wouldn't be relocated, what would
19 happen to them?

20 A They would have to be relocated. We
21 couldn't construct the project with utilities in
22 their current location.

1 Q And, lastly, on this exhibit, there's
2 indicated proposed retention pond. Why is that part
3 of this project?

4 A That's part of the overall storm water
5 management strategy for the project. Currently,
6 with -- as far as down as we're taking the roadway,
7 we cannot drain this by gravity, so there will be
8 actually be a pump station where we will mechanically
9 pump the water from this well location in --
10 right-of-way up through this permanent easement into
11 this detention basin where we'll provide both flood
12 control and water quality management BNPs and then
13 discharge it downstream through the subdivision.

14 Q So without water detention, I mean, you
15 wouldn't be able to pump -- you have to be able to
16 pump the water somewhere in the excavated area --

17 A I would prefer storm water management.
18 There's different aspects to that, that we have to
19 get the water out from under the bypass or underpass
20 so that it doesn't flood, so we have to maintain that
21 so that we don't have a flooding condition on the
22 roadway. We pump it up to its higher location, which

1 would be in this basin where we can hold it and we
2 could provide certain water quality best management
3 practices that will allow us when we discharge it to
4 discharge clean water and discharge it at a rate that
5 won't cause downstream flooding.

6 Q So do you regard this as a necessary
7 component of the project has well?

8 A Yes, it is.

9 Q Would it be constructed without storm water
10 detention?

11 A No.

12 Q You can go ahead and sit back down,
13 Mr. Giertych.

14 Just moving through quickly some of
15 the other exhibits. Looking at Exhibit B, can you
16 identify that document?

17 A These are the construction plans.

18 Q The plans call for a widening of Washington
19 Street from two to four lanes; is that right?

20 A That's correct.

21 Q And why -- why is Washington Street being
22 widened?

1 A Because the current operations exceed
2 capacity and will worsen with anticipated future
3 growth of traffic.

4 Q And is east of the project is Washington
5 Street a four-lane roadway?

6 A Yes. Yes, it is.

7 Q And west of the project, will it be a
8 four-lane roadway?

9 A It will be a four-lane roadway, yes.

10 Q So without widening it to four lanes, would
11 there be any sort of traffic management issue?

12 A Yes. It currently exceeds capacity and
13 will only get worse as traffic continues to grow in
14 volume.

15 Q I'd like to direct your attention to
16 Exhibit C.

17 Can you identify that document?

18 A This is a cost breakdown that was, I
19 believe, presented at the hearing back in July.

20 Q So is there a more current breakdown of the
21 project costs?

22 A I believe we have an updated version of

1 this that shows more refined costs based on where we
2 are with the project development process.

3 Q And I would like to quickly redirect you to
4 that, Exhibit U, and ask you, is that the most
5 current breakdown of the project costs?

6 A Yes, it is.

7 MR. GUNNARSSON: I'm going to have a separate
8 copy of that that you can look at and just make it
9 easier because we were we'll also be going through
10 the exhibits with reference to that, your Honor.

11 MR. HEALEY: Can we go off the for the record
12 for a minute?

13 MR. GUNNARSSON: Sure.

14 (Discussion off the record.)

15 JUDGE KIRKLAND-MONTAQUE: Back on the record.

16 MR. HEALEY: Your Honor, if I could, could I
17 make a brief statement on the record prior to
18 Mr. Gunnarsson continuing?

19 JUDGE KIRKLAND-MONTAQUE: You may.

20 MR. HEALEY: Thank you, your Honor.

21 The Railroad has made an argument in
22 this docket that 23CFR 646.210C3 would indicate

1 that -- in a project where a grade separation is
2 being put at an existing at-grade crossing with
3 signals that the Railroad's 5 percent allocation of
4 costs is measured by the lesser of the actual cost of
5 relocation, the estimated cost of relocation, the
6 estimated cost of a structure and approaches as
7 described above, whichever is less. In light of
8 further consideration of that position and in
9 discussion with counsel for the County, the Railroad
10 has determined, for purposes of this proceeding any
11 way without waiver of the right to raise it at some
12 other point, that, in fact, that section of the
13 regulations is not applicable to a grade separation
14 project. The conclusion we've reached from that
15 position, which again we're taking without prejudice,
16 we're just taking it for purposes of this docket, is
17 that however your Honor determines the 5 percent
18 allocation applies to the various project elements,
19 we don't need to get into the actual estimated costs
20 of those elements right now because the Railroad, in
21 no event, with that stipulation, will be paying on
22 estimated costs. For purposes of the docket, we'll

1 be paying actual costs incurred by the County for the
2 construction and planning and so on for the various
3 elements that you determine is included.

4 So for purposes of this hearing, what
5 we will need is for your Honor to determine what
6 category of costs are properly allocable at 5 percent
7 to the Railroad and you won't have to determine what
8 is the estimated cost at this time, how much do we
9 break out, there are cost items we may -- by way of
10 example, question that aren't necessarily broken out
11 in Exhibit U --

12 MR. GUNNARSSON: Yes.

13 MR. HEALEY: -- but I don't think it's
14 necessary to try to drill in with Mr. Gunnarsson's
15 witnesses to try and determine the costs of those
16 because we'll be able to identify the categories and
17 then when the actual costs come out, if you've
18 determined they're allocable and the Commission
19 approves it, then we'll pay on the actual.

20 JUDGE KIRKLAND-MONTAQUE: Okay. Are you in
21 agreement with that?

22 MR. GUNNARSSON: Yeah, we agree with that. It

1 should be 5 percent of actual project costs.

2 MR. HEALEY: Yeah.

3 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you,
4 Mr. Healy for that.

5 And on that note, Mr. Gunnarsson, you
6 can, you know, you can direct your witnesses
7 testimony to the various categories that area at
8 issue.

9 MR. GUNNARSSON: Very good, Judge.

10 BY MR. GUNNARSSON:

11 Q All right. So, Mr. Giertych, looking at
12 Exhibit U, I'm just going to go down what's indicated
13 here and ask you to describe what they refer to.

14 So the first line item is Program
15 Management. What is Program Management?

16 A Program Management on this project, Lake
17 County has five projects that are part of our
18 Challenge Bond Program. We hired an engineering
19 consultant to provide us with program and project
20 management services as an extension of our senior
21 staff to manage those projects on our behalf. This
22 is one of those five projects.

1 Q And why is that part of the project?

2 A These are very large and complex projects
3 and it exceeded our staff capacity to undertake all
4 five of those projects at the same time, so we
5 brought this consultant in to provide these
6 professional services -- engineering services to us,
7 as I mentioned, as an extension of our staff -- our
8 senior staff.

9 Q So without this consultant providing
10 project management, would the County have been able
11 to undertake this project?

12 A No.

13 Q Okay. The second item is Phase 1
14 Engineering. What is Phase 1 Engineering?

15 A Phase 1 Engineering is the initial
16 engineering stage and, basically, what we do is we
17 start with a blank slate, we look all at all the
18 different parameters that go into or are relevant to
19 a project, things such as the traffic, the accident
20 history, environmental factors, conditions in the
21 field.

22 We have a public involvement process

1 at this stage where we get the public involved. We
2 ask them for their thoughts on what they would like
3 to see in the way of a road project and we develop a
4 purpose and need for the project and once that's
5 established then we develop alternative solutions
6 that address that purpose and need; and based on an
7 evaluation of a cost benefit analysis of those
8 different alternative solutions, we arrive at a
9 preferred alternative, which is a conclusion of the
10 Phase 1 process. So we have a design report that
11 puts forward a preferred alternative that meets the
12 purpose and need of the project.

13 Q Now, are federal funds devoted to this
14 project?

15 A Yes, they are.

16 Q And do the -- does the devotion of federal
17 funds come with certain requirements such as holding
18 public hearings?

19 A Yes. There's a process that we have to
20 follow for federal projects for them to be eligible.

21 Q And does that include public hearings?

22 A Public involvement, yes.

1 Q Which you've already described as part of
2 the Phase 1 --

3 A Yes.

4 Q -- process?

5 And just incidentally, have those
6 costs already been incurred?

7 A Yes, they have.

8 Q So -- I know as far as the estimated costs,
9 we won't bother with that; but as far as this line
10 item, what's indicated here on Exhibit U for Phase 1
11 Engineering, those are costs that have already been
12 incurred for Phase 1?

13 A That's correct.

14 Q Phase 2 Engineering, what is that?

15 A Phase 2 Engineering follows the completion
16 of the Phase 1. So we have a design report -- final
17 design report at the conclusion of Phase 1 that
18 basically defines what the project is going to be.
19 Phase 2 is the development of the engineering plans
20 and construction plans to build the project. So the
21 construction plans and specifications are developed,
22 survey work is done, right-of-way plats and legals

1 are developed, right-of-way is acquired, that's all
2 part of the Phase 2 process.

3 Q The plans that were marked as Exhibit B
4 that you've already identified, are those the Phase 2
5 plans?

6 A Yes, they are. And the Phase 2 will
7 conclude when we take the project to a competitive
8 bid or a bid award.

9 Q It also includes the contract
10 specifications and the letting of the contract?

11 A Yes.

12 Q For both Phase 1 and Phase 2 engineering,
13 who is the engineer that's been contracted?

14 A The consulting firm is Patrick Engineering.

15 Q And for both of those, were those
16 publically let contracts?

17 A We award those under -- as professional
18 services under our qualification based selection
19 process.

20 Q So do you solicit --

21 A We're required by law to use that
22 methodology for awarding professional services.

1 Q So you follow the State law --

2 A Yes.

3 Q -- in terms of selecting Patrick

4 Engineering?

5 And going back to program management,

6 who is the outside consultant for that?

7 A That's TranSystems, an engineering

8 consultant.

9 Q Were they also retained for professional

10 services --

11 A Yes.

12 Q -- in determining a contractor?

13 A Yes, they were.

14 Q Okay. Right-of-way acquisition, what does

15 that refer to?

16 A That's the acquisition of the additional

17 property that is necessary, either through fee simple

18 acquisition, temporary easements or permanent

19 easements for the various needs on the project.

20 Q Without the right-of-way acquisition, would

21 the project be constructed?

22 A No, it would not.

1 Q Wetland Bank, what does that refer to?

2 A Wetland banking, this refers to -- the
3 project impacts several regulatory wetlands. So what
4 we are required to do through the permitting process
5 through the Corps of Engineers is to mitigate those
6 impacts and the way we do that is we purchase wetland
7 credits -- Wetland Bank credits and we keep an
8 account that has those credits and as we need to use
9 them, we charge against that account and there is an
10 equivalent cost that we paid for those banking
11 credits. This is the actual costs of the credits
12 that we're using to mitigate the wetland impacts on
13 the projects.

14 Q What's indicated here is the actual costs
15 that have already been incurred?

16 A Yes.

17 Q And going back to Phase 1 and Phase 2
18 engineering right-of-way acquisition, are those
19 estimated or are those actual costs?

20 A The Phase 2 engineering is not quite
21 complete yet. It's very close, but that's a close
22 number. Right-of-way acquisition is complete and

1 that's an actual number.

2 Q I think you already testified Phase 1
3 engineering, that's an actual?

4 A That's complete.

5 Q Phase 2 is somewhat estimated?

6 A It's very close.

7 Q The next item is construction,
8 self-evident, that's building the project; is that
9 right?

10 A That's correct.

11 Q There's a figure here, but that's an
12 estimate; correct?

13 A That's an estimate, yes.

14 Q Phase 3 Engineering, what does that refer
15 to?

16 A That's the engineering that's required
17 during the construction phase, so that's part of the
18 construction. That's the on site engineering that's
19 necessary to work with the contractor on issues that
20 come up day to day and maybe even bigger issues that
21 have to be resolved and worked through.

22 Phase 3 Engineering also verifies that

1 the work is being done according to the plans and
2 specs, verify that quantities being charged by the
3 contractor are verified and actual so that the public
4 is not being overcharged for, you know, materials
5 that are going into the project, that sort of thing.

6 There's a variety of tasks -- it's a
7 day to day presence on the project. Basically, you
8 can say that they're the owner's representative.
9 They represent our interest and the public's interest
10 on the project during the construction phase.

11 Q And now is that unusual for a project of
12 this scope to have Phase 3 engineering?

13 A No. Actually, the more complex the
14 project, the greater the need for Phase 3
15 Engineering.

16 Q And would you regard this as a complex
17 project?

18 A Yes, I would.

19 Q And in comparison to other County projects,
20 how would you compare them in terms of its relative
21 complexity?

22 A This is one of the most complex projects

1 we've ever undertaken. We currently have similar
2 project taking place at Rollins and 83 just north of
3 here, it might be a little more complex, but this is
4 right up here.

5 Q Rollins, did you also have Phase 3
6 engineering?

7 A Yes, we did.

8 Q The next item is Force Account Work by the
9 CNRR being the CN Railroad or in this proceeding, the
10 Wisconsin Cental. What does that refer to?

11 A This is the work that the Railroad needs to
12 undertake with regard to the track modifications
13 during the course of the project, shoofly
14 connections, things like that.

15 Q And what work the Railroad is going to be
16 doing, that's already been specified in the agreement
17 with the Railroad; is that correct?

18 A That's correct.

19 Q So that -- in terms of the scope of the
20 Railroad's work is already by agreement; is that a
21 fair statement?

22 A That number was provided to us by the

1 Railroad.

2 Q The number that's in there is the
3 Railroad's own estimates of the costs?

4 A That's correct.

5 Q Force Account Work by Metra, what does that
6 refer to?

7 A That's the work that Metra's crews need to
8 perform to construct the temporary station at the
9 commuter station at the Metra station to connect
10 commuters to the new alignment so that they could
11 still access the Metra trains on the shoofly.

12 Q And that work is done by Metra force?

13 A This is -- by "force account," it refers to
14 the work being done by Metra's crews.

15 Q And I think you already testified that
16 that's a necessary component of this project; is that
17 a fair statement?

18 A That's correct.

19 Q And I think you earlier testified that
20 we're widening Washington Street from two to four
21 lanes in the area of this project to meet up with
22 four lanes on either side; is that a fair statement?

1 A There's an existing four-lane section to
2 the east that we'll be matching up with. The portion
3 to the west is planned to be constructed about the
4 same time as this project. So it's not yet there,
5 but it will be by the time this project is complete.

6 Q Now, we have an estimate for the
7 construction and I don't want to dwell much on the
8 estimates, but just to address this, does that
9 estimates include the costs for the full four lanes?

10 A I don't know the answer to that.

11 Q Okay. Would you defer to --

12 A I would defer to Mike Pine on that.

13 Q Okay. We'll address that with Mr. Pine.

14 The County is also constructing a
15 second rail line by agreement with the Railroad; is
16 that right?

17 A A temporary shoofly.

18 Q Temporary or substructure widening to
19 accommodate second track I should say?

20 A We're providing additional substructure and
21 foundation that would be necessary for the Railroad
22 in the future to provide a second track along -- or a

1 adjacent to this alignment.

2 Q And the Railroad is committing 1.5 million
3 for this widening; is that correct?

4 A That's correct.

5 Q And is that figure included in the total
6 project cost figure against which the County is
7 asking the 5 percent allocation to be applied?

8 A No, I believe that's been excluded.

9 Q And you were just looking at footnote 3
10 which addresses that?

11 A Right.

12 Q And this footnote, just incidentally,
13 appears to indicate that the construction accepts the
14 costs from that -- the estimate for the construction
15 for the cost for the roadway widening.

16 Do you see that?

17 A That's correct.

18 Q So this exhibit is accurate, it pulls out
19 the costs going from two to four lanes; is that a
20 fair statement?

21 A That's correct.

22 Q Still keeping out Exhibit U, Mr. Giertych,

1 and we'll make reference to other exhibits.

2 Directing your attention to Exhibit J, can you
3 identify that exhibit, Mr. Giertych?

4 A This is the estimate that was prepared, I
5 believe, by Patrick that breaks out the costs for the
6 additional two through lanes along Washington Street
7 within the limits of this Grade Separation Project.

8 Q And if that Footnote 3 under Exhibit U is
9 accurate in terms of accepting out the costs for the
10 roadway widening, do you have an understanding
11 whether this total cost figure for the roadway
12 widening was filled out on that --

13 JUDGE KIRKLAND-MONTAQUE: Can you speak up?

14 MR. GUNNARSSON: I'm sorry, Judge.

15 BY MR. GUNNARSSON:

16 Q That figure was pulled out of the cost for
17 the construction?

18 A Yes, that's correct. That's what's
19 reflected in the footnote and this is just a
20 breakdown of how that cost is arrived at.

21 Q Exhibit K, can you identify that exhibit?

22 A This is a Purchase Agreement with the bank

1 that we purchased the wetland credits from.

2 Q So the item that you referred to, wetland
3 banking, does this have reference to that?

4 A Yes.

5 Q And this provides the methodology for
6 getting a credit for the wetland banking?

7 A This is a record of how we acquired those
8 credits, yes.

9 Q Exhibit L, can you identify that document?

10 A Is this an e-mail -- Mike Siemitis
11 (phonetic) is our manager of our Design Department
12 and I had asked Mike to provide me with a cost for
13 the mitigation on this project and he was able to
14 calculate that we had a total impact of point 355
15 acres and that the wetland credits had been purchased
16 at \$71,000 an acre, so the corresponding cost of
17 mitigation was 25,240.

18 Q And that 71,000, is that in reference to
19 Exhibit J then --

20 A That's contained in the agreement that's
21 Exhibit J.

22 Q And with reference to Exhibit U, is that

1 the figure that was placed for the wetland banking?

2 A Yes. 25,240.

3 Q And just briefly, can you identify Exhibit
4 M?

5 A This is just a spreadsheet that Mike
6 Siemitis keeps that shows the status of our wetland
7 bank credits. So as we use credits, Mike has to keep
8 track of how many we've used so that we have enough
9 left in our bank account.

10 Q Okay. In reference to Items 9 and 10 of
11 this exhibit, does that refer to the Wetland banking
12 items for this project?

13 A Yes. Those are the two impacts for this
14 project which add up to the .355 acres.

15 Q Skipping over to Exhibit O, can you
16 identify that document?

17 A This is the accounting ledger that our
18 Accounts Payable staff keeps for different section
19 numbers and this section number is for the
20 right-of-way acquisition on this project.

21 Q And does this show the actual right-of-way
22 costs for this project?

1 A Yes. This summary of this ledger shows
2 that we've paid a total of \$2,580,591 to date.

3 Q So those are actual costs incurred for
4 rights-of-way for this project?

5 A These are actual costs incurred to purchase
6 parcels and also related costs. For instance, I
7 think there's some minor costs here associated with
8 turning off the gas to a house that was located on
9 one of the parcels that we ended up demolishing, some
10 of the costs associated with the demolition.

11 Q Okay. In order to use the right-of-way
12 that we've acquired?

13 A Right.

14 Q And was that figure then entered in
15 Exhibit U for right-of-way acquisition?

16 A Yes. The right-of-way acquisition total is
17 the same, 2585,591.

18 Q And also on Exhibit O it shows payment for
19 easements from the Wisconsin Central; is that
20 correct?

21 A That's correct. We paid for two easements
22 from the Wisconsin Central.

1 Q Okay. So the figure in Exhibit U for
2 right-of-way acquisition and Exhibit O includes the
3 actual costs for the Wisconsin Central rights-of-way?
4 A Correct. That was \$11,100.
5 Q And looking back at Exhibit O, does that
6 include the purchases for all of the needed
7 right-of-way for this project?
8 A Yes, it is.
9 Q Briefly, Exhibit P, what is this document?
10 A Exhibit P shows the ledger for which
11 there's been no charges yet, but it shows the
12 starting amount for the Phase 3 contract with V3
13 Companies which is a professional engineering
14 services company that provides Phase 3 services.
15 Q And that's not an actual cost yet incurred;
16 correct?
17 A No, that reflects the contract costs which
18 we have a contract in place with V3 and that's the
19 starting amount.
20 Q This was prepared by that same staff person
21 at DOT; is that right?
22 A Correct. This is an accounting ledger.

1 Q And that estimated item amount was included
2 in Exhibit U; correct?

3 A Correct. It's the same amount 2,219,151.

4 Q Exhibit Q, can you identify that document?

5 A This is the estimate from Metra for the
6 platform construction work.

7 Q This is the Metra force account work?

8 A Yes.

9 Q And that was also entered into Exhibit U;
10 is that correct?

11 A Yes. It's the same amount, 244,166.

12 Q And this is a document prepared by Metra
13 that was provided to the County?

14 A Correct.

15 Q Exhibit R, can you identify that?

16 A This is the estimate that was provided to
17 us by the Wisconsin Central for the force account
18 work required by their personnel.

19 Q And that figure at bottom is also entered
20 into Exhibit U?

21 A That total matches the amount on Exhibit U
22 of 1,071,820.

1 Q Exhibit S, can you identify that document?

2 A This is an e-mail from Brian Fairwood at
3 TranSystems. I had asked Brian if he could provide
4 us with the amount that TranSystems had charged to
5 this project. In their work, as I mentioned, their
6 contract is to administer five different projects for
7 us and so this was the amount that he attributed to
8 their services on this project.

9 Q Exhibit T, can you identify that document?

10 A This is once again an accounting ledger and
11 this is for that contract with TranSystems for the
12 project and program management services that they're
13 providing us. And this is, once again, the total
14 amount for five different contracts.

15 Q Of which the 380,000 is part of that?

16 A So the 380,000 is not reflect on this
17 sheet. This sheet only reflects the total amount of
18 the contract and the individual progress payments,
19 but it comes out of this total amount.

20 Q Gotcha. Was the 380,000 an actual cost
21 incurred?

22 A Yes, I believe it was.

1 Q Exhibit V, can you identify that exhibit?

2 A This is, once again, an accounting ledger

3 and this is with Patrick Engineering and this is for

4 the Phase 1 engineering contract and it reflects the

5 total amount of the contract of 1,794,988.

6 Q So that's the same figure entered in

7 Exhibit U?

8 A That's the same figure on Exhibit U and

9 this is all charges that will be against this

10 contract.

11 Q Were they costs already incurred?

12 A This has all been incurred, yes.

13 Q And this was prepared by the same

14 individual at DOT.

15 A Yes.

16 Q And is it her function to prepare

17 exhibits -- documents like that?

18 A Yes. That's...

19 Q It's a financial person in Accounting?

20 A She is an accounting person that keeps

21 track of contract payments and payments on

22 construction projects, engineering projects. All of

1 our payments are processed through Wendy Roche
2 (phonetic).

3 Q Exhibit W, can you identify that?

4 A This is another accounting ledger, this is
5 with Patrick Engineering and this is for the Phase 2
6 contract and this shows the contract award amount of
7 2,020,454 and what we're showing on -- I'm sorry,
8 there was an addition to that contract, so it was
9 2,218,727 which is the amount reflected on Exhibit U.

10 Q You already testified that there would
11 still be some work, at least to engineering?

12 A This is contract to date. We have not
13 charged out the total amount in this contract yet,
14 but we're finishing up the contract right now.

15 Q And, again, this is -- ledger was prepared
16 by that same individual at DOT?

17 A That's correct.

18 JUDGE KIRKLAND-MONTAQUE: Prepared by who?

19 BY MR. GUNNARSSON:

20 Q The same individual at DOT is responsible
21 for creating these ledgers?

22 A Right.

1 JUDGE KIRKLAND-MONTAQUE: Okay. I didn't hear
2 you.

3 BY MR. GUNNARSSON:

4 Q I think we had skipped over -- just a
5 couple more exhibits that I'll ask you to identify.

6 Just for the record, going back to
7 Exhibit D, I think you had testified at the July
8 hearing on this, but just to get this in the record,
9 what is Exhibit D?

10 A This basically explains our Challenge Bond
11 Program. When the new sales tax was enabled by the
12 RTA reform legislation that was passed in 2008, Lake
13 County realized additional course of sales tax for
14 transportation purposes and the County Board made a
15 decision to issue bonds to front end load that
16 program so that we can get some large projects
17 accomplished early in the program and this is just
18 the County Board resolution authorizing the issuance
19 of those bonds in the amount of \$90 million.

20 Q So to finance this project?

21 A This project, along with three others.

22 Q Going back to now Exhibit Z, Mr. Giertych,

1 is that the agreement between the County and
2 Wisconsin Central without the exhibits attached to
3 it?

4 A Yes, it is.

5 Q I'd like to direct your attention in
6 particular to what's on Page 4, item 1E -- actually
7 1E II. And does that provide that the County and the
8 Wisconsin Central agree that the amount of the
9 contribution by the Wisconsin Central to the project
10 shall be determined by the ICC; is that right?

11 A Yes, it does.

12 Q Exhibit AA, the next Exhibit AA, can you
13 identify that document?

14 A I thought we were done with Z.

15 Q No, we've got two more.

16 JUDGE KIRKLAND-MONTAQUE: If I could ask a
17 question really quickly --

18 MR. GUNNARSSON: Sure.

19 JUDGE KIRKLAND-MONTAQUE: -- about the
20 Exhibit Z.

21 MR. GUNNARSSON: Yes.

22 JUDGE KIRKLAND-MONTAQUE: What did you cite as

1 stating that the ICC would determine something? Was
2 it Page 4?

3 MR. GUNNARSSON: It's the fourth page, Judge,
4 and it was at the bottom of E II, the very last few
5 lines of that paragraph.

6 JUDGE KIRKLAND-MONTAQUE: I don't see -- is E
7 titled Reimbursement?

8 MR. GUNNARSSON: Yes.

9 JUDGE KIRKLAND-MONTAQUE: And then I see one I
10 and then it goes to three Is.

11 MR. GUNNARSSON: Well, it's kind of formatting.
12 Just above the three I, there's two Is --

13 JUDGE KIRKLAND-MONTAQUE: Oh, okay.

14 MR. GUNNARSSON: In the body there, Judge.

15 JUDGE KIRKLAND-MONTAQUE: Okay. Gotcha. I
16 didn't see it. Okay. All right. Thank you.

17 BY MR. GUNNARSSON:

18 Q Is AA the contract for the Phase 3?

19 A Yes, it is.

20 Q All right. And, again, we have a figure in
21 that, but that's an estimated figure; is that
22 correct?

1 A That's correct.

2 JUDGE KIRKLAND-MONTAQUE: I'm sorry, which

3 exhibit are you at now?

4 MR. GUNNARSSON: Double A.

5 JUDGE KIRKLAND-MONTAQUE: Where is --

6 MR. GUNNARSSON: There should be a yellow tab.

7 I ran out of --

8 JUDGE KIRKLAND-MONTAQUE: I see it.

9 BY MR. GUNNARSSON:

10 Q Looking at the very last page of that

11 exhibit it says, Total of all work.

12 Do you see that, Mr. Giertych?

13 A Yes.

14 Q And is that the amount that's estimated

15 that's put in Exhibit U?

16 A 2,219,151, they're the same number, yes.

17 Q And, finally, Exhibit BB, what is that

18 document?

19 A This is our contract with TranSystems.

20 Q Which you already spoke of as far as the

21 program management?

22 A Program and project management services,

1 yes.

2 Q For which they're handling for -- several
3 projects for the County of which this is one of them?

4 A That is correct this is one of five
5 projects they handle for us.

6 Q Going back to Exhibit U in conclusion,
7 Mr. Giertych, each of the items that are indicated
8 here in Exhibit U that you've testified about, is it
9 your testimony that without any one of those items,
10 would this project go ahead?

11 A These are all necessary for the project to
12 be constructed and put in place.

13 MR. GUNNARSSON: Thank you, Mr. Giertych.

14 Nothing further, your Honor.

15 JUDGE KIRKLAND-MONTAQUE: Okay.

16 MR. GUNNARSSON: Actually, I would ask that the
17 exhibits that we've testified to -- it's A through D
18 and then J to double B be admitted.

19 JUDGE KIRKLAND-MONTAQUE: Give me a second. A
20 through D.

21 MR. GUNNARSSON: A through D, your Honor, and
22 then J through double B, BB.

1 JUDGE KIRKLAND-MONTAQUE: Okay. Any objection
2 to admitting those exhibits?
3 MR. HEALEY: No, your Honor.
4 MR. POWERS: No objections, your Honor.
5 JUDGE KIRKLAND-MONTAQUE: Okay. Petitioner's A
6 through D and J through BB are admitted into
7 evidence.
8 (Whereupon, Petitioner's A through D
9 and J through BB were
10 admitted into evidence.)
11 MR. GUNNARSSON: Thank you, Judge. Nothing
12 further.
13 JUDGE KIRKLAND-MONTAQUE: Mr. Healey?
14 MR. HEALEY: Can I review the Exhibit A, your
15 Honor?
16 JUDGE KIRKLAND-MONTAQUE: Sure.
17 CROSS-EXAMINATION
18 BY
19 MR. HEALEY:
20 Q Mr. Giertych, the project we've been
21 talking about is going to be widening Washington
22 Street from two lanes to four; is that correct --

1 A That's correct.

2 Q -- generally speaking?

3 Okay. And you've identified on your

4 exhibit the touchdown points, which I think is you

5 said is where the road will effect a change of grade

6 from what it would otherwise be other than for the

7 going underneath the railroad; right?

8 A That's correct.

9 Q A number of the documents that we just

10 admitted into evidence discuss a part of the project

11 being between Haryan Way and Hainesville Road.

12 Can you show us where that is on the

13 Exhibit.

14 A Haryan Way is located here.

15 Q I'm sorry, Haryan Way?

16 A Yes.

17 Q Okay. Thank you. And then Hainesville

18 Road?

19 A Hainesville Road is actually further to the

20 west.

21 Q Okay.

22 A That's the next intersection.

1 Q If I'm understanding the exhibit, the west
2 touchdown point for the grade separation is just east
3 of Haryan Way; correct?

4 A That's correct.

5 Q So any cost element involved in something
6 between Hainesville Road and Haryan Way wouldn't be
7 attributable able to the grade separation; correct?

8 A That's correct, yes.

9 Q And so any costs associated with that
10 shouldn't be attributed to the Railroad's 5 percent
11 contribution for what we're terming the overall
12 project because it's not related to the construction
13 of grade separation?

14 A If it's not related to the work taking
15 place within the touchdown limits, that's correct.

16 Q Do you know if the County did any work to
17 eliminate the costs that would be incurred by the
18 project for elements of the project outside of the
19 touchdown limits?

20 A I'm sorry, can you ask me that question
21 again?

22 Q Sure. Do you know if the County has done

1 anything with its cost estimates to eliminate the
2 portions of costs for items incurred outside of the
3 touchdown limits? And I could probably point you to
4 an example to show you --

5 A Okay.

6 MR. HEALEY: Do you remember, Gunnar, the
7 exhibit that had to do with the wetlands purchase?

8 MR. GUNNARSSON: Yes. That would have been J,
9 I believe. No, I'm sorry, K. K through --

10 MR. HEALEY: Wetlands purchased --

11 MR. GUNNARSSON: K, L and M.

12 BY MR. HEALEY:

13 Q If I could direct the witness' attention to
14 Exhibit L. This is an e-mail, November 4th and it
15 indicates the wetland permitting was done for
16 Washington Street, Hainesville to Haryan and Haryan
17 to Lake. The Haryan to Lake section only had
18 isolated wetland impacts.

19 Is the total cost item for that --
20 does that include the wetland purchases for both the
21 Hainesville to Haryan and Haryan to Lake segments of
22 the project?

1 A No. That only -- what Mike did was he
2 explained that the permitting process was combined --

3 Q Okay?

4 A -- but then what he does is he breaks out
5 the portion from Haryan to Lake.

6 Q I'm not sure I read the e-mail that way.
7 Can you show me the part of the e-mail that indicate
8 that?

9 A He says, The wetland permitting was done
10 for both Washington Street from Hainesville to Haryan
11 and Haryan to Lake combined. The Haryan to Lake
12 section, which would be the second half of that, only
13 had isolated wetland impacts under Lake County
14 jurisdiction in the Mill Creek Basin and then it's
15 not real -- he doesn't go maybe as far as he could to
16 explain it, but the attached Neil -- Neil Marsh Bay
17 (phonetic) ledger is for that particular impact. I
18 had asked Mike for the wetland impacts for this
19 particular section and I believe that's what he's
20 providing me.

21 Q Okay. But his e-mail doesn't clarify that
22 either the .3555 acres or the acreage cost is limited

1 tore the Haryan to Lake segment; is that correct?

2 A I agree it could be clearer and we'd be
3 happy to verify that.

4 Q Okay. You've presented an overall cost
5 item for the project of -- it's changed several
6 times -- it was about 33 million and we've backed out
7 a million half that the Railroad is already paying.

8 Does that overall project cost include
9 all of the costs for widening the road from Haryan
10 down to Hainesville?

11 A No, it does not.

12 Q Okay. So those items have been excluded?
13 There's -- I don't find references anywhere to the
14 fact that those were included. You've let
15 constructions contracts for a contractor who is going
16 to do the paving, they in the exhibits broken out the
17 difference in the cost of the paving between the
18 touchdown points and then outside of the touchdown
19 points?

20 A It's two separate projects. We have one
21 project from Haryan to Lake and a second contract
22 will be awarded later in '15 for Hainesville to

1 Haryan. So there's two separate construction
2 projects.

3 Q Okay. You'd agree with me that there's
4 portions of widening Washington street that are
5 outside of the touchdown limits? And even between
6 Lake and Haryan?

7 A Actually the portion east he have that east
8 touchdown is already widened that's a resurfacing
9 that will occur and I believe that's been broken out.

10 Q Okay. And then over here, there is a small
11 segment between the touchdown point and Haryan?

12 A I believe there, the touchdown point
13 reflects the limits of construction on the pavement.

14 Q So is Washington going to remain two lanes
15 west of the west touchdown point or is the expansion
16 to four lanes going to be included in the Haryan to
17 Hainesville reconstruction?

18 A I believe that that's the point at which
19 the project to the west would match up, but I would
20 defer to Mike Pine to give you have a specific answer
21 on that -- a more detailed answer.

22 Q Okay. You -- in your testimony you

1 referenced a variety of land acquisition.

2 Do you have any diagram or exhibit to
3 sort of show the limits of what -- what land was
4 acquired for the project? And if there's a witness
5 that's better equipped to handle it, please feel free
6 to defer.

7 MR. GUNNARSSON: If I might, Tom, they put the
8 particular parcels in the Answers to Interrogatories,
9 so would that be satisfactory?

10 MR. HEALEY: I was looking for a visual
11 depiction of what was acquired, I wanted to know --

12 THE WITNESS: It's not complete, but it's the
13 majority of it on just a sheet for myself here that I
14 could show you.

15 MR. HEALEY: If that's okay with you.

16 MR. GUNNARSSON: Yeah, that would be fine.

17 THE WITNESS: It doesn't reflect the
18 acquisitions that took place on the south side of
19 Washington. This is all on the north and it reflects
20 what's a take, what's a temporary easement and what's
21 a permitted easement.

22

1 BY MR. HEALEY:

2 Q And when you're indicating "take," that
3 would indicate that the County has acquired the fee
4 interest, the underlying ownership of the land?

5 A It's a fee simple acquisition, yes.

6 Q And then the permanent easement and
7 temporary easements -- well, the temporary easements
8 would be released once the project is concluded?

9 A That's correct.

10 Q And the permanent easements, obviously,
11 would be kept until even after the conclusion of the
12 project?

13 A There's one permanent easement that allows
14 a storm sewer to be run to the storm water management
15 facility. We have no need to have the over ground
16 rights to it.

17 Q Okay. What is the County going to do with
18 the take property, the fee acquisition?

19 A That will be -- that was necessary to
20 accommodate the slopes that are being created to
21 create the grade separation. There is also utilities
22 being located in those areas and bridge abutments,

1 bridge abutments grading and utility relocation.

2 Q One, if I could direct your attention to
3 Exhibit U, the first cost item involved was a program
4 management charge. I'm looking maybe to confirm,
5 maybe it's actually a better question for Gunnar, but
6 you have not included those costs in the allocation
7 to the Railroad; correct?

8 MR. GUNNARSSON: We have included -- and I was
9 incorrect in my reply. I e-mailed you toward the end
10 of last week that the County had included it in the
11 U, so I was incorrect in saying that. So that was
12 included and --

13 MR. HEALEY: I don't remember you sent an
14 e-mail, I'm not saying you didn't; but I don't
15 remember that.

16 MR. GUNNARSSON: Okay.

17 MR. HEALEY: The reply brief that was filed on
18 behalf of the County --

19 MR. GUNNARSSON: Yes.

20 MR. HEALEY: -- indicated that those costs
21 would not be attributable to the Railroad and now you
22 are indicating that, in fact, they are.

1 MR. GUNNARSSON: We had in our main brief and
2 then in the Answers to Interrogatories. I thought we
3 pulled it out, but I was incorrect about that. We do
4 have it in there and, yeah, I did send you the
5 e-mail, yes, but it was by way of correction to the
6 reply brief.

7 MR. HEALEY: Okay. That's fine.

8 BY MR. HEALEY:

9 Q Mr. Giertych, if I understand, those costs
10 that were incurred by the County to accomplish work
11 that the County would otherwise accomplish if it had
12 sufficient manpower to do the work? I think that was
13 a fair summary of your testimony, but please correct
14 me if I'm wrong.

15 A They're functioning as an extension of
16 staff just as construction contractors, consulting
17 engineering, anyone else would.

18 Q The County is not looking to the Railroad
19 to be paying for the staff working on the project;
20 correct?

21 A Not for our internal staff, no.

22 Q So if the County had sufficient staff to

1 handle those elements of that program management,
2 wouldn't be -- the County wouldn't be seeking to have
3 the Railroad pay for those elements?

4 A If we did not have those expenses, we would
5 not be seeking to have them pay them, yes.

6 MR. HEALEY: I think that's all I have. Thank
7 you.

8 THE WITNESS: Thank you.

9 MR. GUNNARSSON: No follow-up, Judge.

10 JUDGE KIRKLAND-MONTAQUE: Mr. Powers, do you
11 have any questions?

12 MR. POWERS: I don't have any questions, your
13 Honor.

14 JUDGE KIRKLAND-MONTAQUE: Okay.

15 MR. GUNNARSSON: No redirect, Judge.

16 JUDGE KIRKLAND-MONTAQUE: All right. Why don't
17 we take a 2 or 3-minute break before your next
18 witness.

19 (Break taken.)

20 JUDGE KIRKLAND-MONTAQUE: Okay.

21 Mr. Gunnarsson, I'm ready when you are.

22 MR. GUNNARSSON: Thank you, Judge. I call Mike

1 Pine.

2 MIKE PINE,

3 called as a witness herein, having been first duly

4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. GUNNARSSON:

8 Q Mr. Pine, can you state your name for the

9 record and spell your last name.

10 A Michael Pine, P-i-n-e.

11 Q Who is your employer, Mr. Pine?

12 A Patrick Engineering.

13 Q What is your position at Patrick?

14 A Project manager.

15 Q What duties are entailed in your position

16 as project manager?

17 A In my position, I oversee our project

18 engineers, our staff engineers working on various

19 projects, oversee the preparation of plans,

20 specifications and estimates.

21 Q What is your engineering education?

22 A I have a bachelor of science degree from

1 University of Illinois in Civil Engineering.

2 Q Are you licensed?

3 A Yes. I'm licensed in Illinois.

4 Q How long have you been a project engineer
5 for Patrick Engineering?

6 A Well, I'm project manager, which is for two
7 years. I was project engineer prior to that.

8 Q And how long were you a project engineer?

9 A Four years.

10 Q Are you familiar with Washington -- County
11 of Lake's Washington Street Grade Separation Project?

12 A Yes.

13 Q And what is your role with respect to that
14 project?

15 A I manage the Project Team on that project
16 and I oversee the preparation of the plans,
17 specifications and estimates.

18 Q And by "Project Team," who are you
19 referring to?

20 A I'm referring to our engineers on staff as
21 well as some consultants that we have on our overall
22 Project Team working on the project.

1 Q Staff -- the staff at Patrick Engineering;
2 is that right?

3 A Yes.

4 Q And you're familiar with the engineering
5 plans for the project?

6 A I am.

7 Q Do those plans include utility relocations?

8 A Yes.

9 Q And why must utilities be relocated for
10 this project?

11 A Well, as a result of the change in profile
12 grade that will occur as part of the project, a
13 number of utilities are in conflict and will need to
14 be relocated in order for the project to take place.

15 Q So without relocating the utilities, you
16 couldn't change the grade; is that a fair statement?

17 A Yes.

18 Q Are just public utilities involved or also
19 private utilities?

20 A The project in total will require
21 relocation business both private and public
22 utilities.

1 Q As to the costs for the private utility
2 relocations, who is paying for those costs?

3 A The private utilities are responsible for
4 those costs.

5 Q So I'd like to reference Exhibit U, what
6 you have in front of you. The line item for
7 construction -- I know it's an estimate -- but did
8 that include any costs for private utility
9 relocation?

10 A It does not.

11 Q And it's not the -- strike that.

12 With respect to the public utilities
13 that need to be relocated, what public utilities
14 should be relocated?

15 A The Village of Grayslake has water main and
16 sanitary sewer that require relocation. Lake County
17 Public Works has sanitary as well and Central Lake
18 County JAWA also requires a water main relocation.

19 Q And referring again to Exhibit U, the line
20 item for construction, does that include the costs
21 for the public utility relocation?

22 A Yes.

1 Q You're familiar with this exhibit, am I
2 right, Mr. Pine?

3 A Yes.

4 Q There's a box or a table beneath the
5 various line items.

6 Do you know what that table is in
7 reference to?

8 A It appears to be the cost allocations to
9 the various agencies.

10 Q And indicated here are LCPW, do you know
11 what that refers to?

12 A Lake County Public Works.

13 Q And CLC JAWA, what does that refer to?

14 A That's Central Lake County Joint Action
15 Water Agency.

16 Q And then Grayslake is -- the municipality
17 of Grayslake?

18 A Yeah, the Village of Grayslake.

19 Q So those are the three public utilities; is
20 that a fair statement?

21 A Yes.

22 Q And so they're contributing some figures

1 here. Is that the entire amount of the utility
2 relocation costs that they're contributing?

3 A They are not paying 100 percent of the
4 associated costs, that's the portion that they are
5 paying.

6 Q Do you know what portion they're paying?

7 A I could not say definitively, but in most
8 instances, it would be 20 percent.

9 Q That's the usual allocation?

10 A Yes. But the actual cost breakdown would
11 be determined as part of an agreement between the
12 County and those agencies.

13 Q With respect, again, to the estimate for
14 the construction costs, that includes all of the
15 costs for the utility -- public utility relocation;
16 is that your understanding?

17 A Yes.

18 Q Notwithstanding that the three public
19 utilities are contributing a certain percentage,
20 possibly 20 percent of the costs?

21 A Correct.

22 Q The costs for sidewalk construction, is

1 that also included within the construction cost
2 estimate?

3 A Yes.

4 Q And the cost for the bike path relocation,
5 is that also included in the construction costs?

6 A Yes.

7 Q Why does this project include sidewalk
8 construction?

9 A It includes sidewalk construction to meet
10 the needs of the pedestrian traffic in the area.
11 It's a requirement as part of the Complete Streets
12 Law that we propose sidewalk as well as bike path and
13 it is then the option of the local agency to
14 determine if they want to propose that facility, in
15 this case, the Village of Grayslake.

16 Q And by "Complete Streets," what are you
17 referring to?

18 A That's -- in a sense, it's a policy or a
19 law that requires that all modes of transportation be
20 considered, which includes vehicles, pedestrians and
21 bicyclists.

22 Q So does the bike path exist prior to the

1 project?

2 A Yes. There's an existing bike path.

3 Q And what is being done with the bike path?

4 A Well, as a result in the change in profile,
5 a new bike path would need to be reconstructed, so it
6 would be replaced with a path at a different grade.

7 Q And why is the -- that included in this
8 project?

9 A Again, that is required that we provide
10 that as part of the Complete Streets Law and as part
11 of the public process and the interest by the local
12 agency, it was determined to be included in the
13 project.

14 Q I'd like to direct your attention to what's
15 been marked as Exhibit J, Mr. Pine.

16 Can you identify that document?

17 A Yes. This is an estimate prepared by
18 Patrick Engineering entitled the Incremental Costs
19 for Adding Two Through Lanes Along Washington at the
20 Railroad Underpass.

21 Q So you did this calculation?

22 A Most of it, yes.

1 Q And what was the purpose of this
2 calculation that you undertook?

3 A This was an effort to estimate the overall
4 contractor project costs how much of that was
5 specifically attributed to adding two additional
6 through lanes.

7 Q And is that adding two additional through
8 lanes from touchdown to touchdown?

9 A Yes.

10 Q Just going through these different items,
11 the first one is earth excavation, how did you arrive
12 at that calculation?

13 A What we did was we calculated the area
14 between the existing and proposed roadway profiles
15 and then multiplied that by the width of 24 feet,
16 which is what we attributed to be the width of two
17 additional through lanes and came up with an
18 associated volume.

19 Q So -- and a cost per unit volume?

20 A Yes.

21 Q And that figure is 288,000; is that
22 correct?

1 A Yes.

2 Q And that's to represent the incremental
3 cost of excavation for adding two additional through
4 lanes?

5 A Yes.

6 Q Roadway pavement, can you describe how you
7 made that calculation?

8 A We took the length of the limits of
9 reconstruction, which in this instance, is just under
10 2000 feet and multiplied that by the width of two
11 additional through lanes, which is 24 feet and
12 multiplied that by the appropriate unit cost.

13 Q And that results in a bottom of \$297,920;
14 is that right?

15 A Yes.

16 Q And this represent the incremental costs of
17 widening Washington Street from two to four lanes in
18 the touchdown to touchdown area; is that right?

19 A Yes.

20 Q Bridge is the next item. Can you describe
21 how you made that calculation?

22 A Sure. For the bridge costs, that's

1 incremental to the widening for two additional
2 through lanes, we estimated the amount of steel
3 associated with reducing the spans by 24 feet and,
4 multiplied it out by an estimated unit price.

5 Q So -- and the bottom line you figure, you
6 have \$401,280; is that right?

7 A Yes.

8 Q So this is -- represents the incremental
9 widening of the bridge to be constructed due to
10 having four lanes rather than two lanes; is that
11 correct?

12 A Yes. It represents the costs we attribute
13 to having the span be 24 feet longer.

14 Q And the last item is retaining wall. Can
15 you describe what that calculation is?

16 A We determined that if the cross section is
17 24 feet narrower that this would, in effect, reduce
18 the wall height, so we calculated the volume of
19 concrete and associated rebar that would go along
20 with that to arrive at a reduction in the retaining
21 wall cost.

22 Q And that's \$124,215?

1 A Yes.

2 Q And that's the incremental costs due to
3 having four lanes rather than two lanes for the
4 retaining wall; is that right?

5 A Yes.

6 Q And these cost items, those were an effort
7 at identifying the additional costs from going to two
8 to four lanes; is that correct?

9 A Correct.

10 Q Going back to Exhibit U and the
11 construction line item estimate. Is it -- there's
12 Footnote 3 that talks about the costs not including
13 costs associated with roadway widening.

14 Do you see that?

15 A Yes.

16 Q So do you have an understanding as far as
17 that construction line item, whether it included this
18 incremental cost that you calculated in Exhibit J?

19 A It does include this cost.

20 Q So you took that out of the construction
21 line item?

22 A No, the construction line item includes the

1 \$1.1 million incremental cost.

2 Q Okay. And did you create this exhibit,
3 you, Mr. Pine?

4 A I did not.

5 Q And just to briefly -- I know you already
6 testified back in July to this, but this is part of
7 it just to get it into the record, referring to
8 Exhibit F.

9 Can you identify that document?

10 JUDGE KIRKLAND-MONTAQUE: I'm sorry, which one?

11 MR. GUNNARSSON: Exhibit F, your Honor.

12 JUDGE KIRKLAND-MONTAQUE: Okay.

13 THE WITNESS: Yes. This is a benefit analysis
14 that I had done for the project in 2009.

15 BY MR. GUNNARSSON:

16 Q And that's an effort at quantifying the
17 crash benefit from the project?

18 A Yes.

19 Q And what was the figure that you arrived
20 at?

21 A \$5,648,925.

22 Q And what does that essentially represent

1 based on your calculation?

2 A It's -- there's a number of factors that go
3 into the equation, but the idea that this figure
4 represents the probability of there being a crash
5 over a certain period given the crossing type and the
6 traffic volumes and then taking that probability and
7 combining it with the average cost of various injury
8 types.

9 Q And essentially trying to put a number to
10 the mitigation of the crashes --

11 A Yes.

12 Q -- resulting from the crossing --

13 A Yes.

14 Q -- crossing accidents, okay.

15 And where did you get that formula
16 that you used? I'll direct your attention to
17 Exhibit J -- G, I should say?

18 A Yes. Exhibit G, which is from the Illinois
19 Department of Transportation, Bureau of Local Roads
20 and Streets Manual includes a formula for estimating
21 the crash benefit.

22 Q Okay. And that's the formula that you used

1 in Exhibit F; is that right?

2 A Yes.

3 Q Are there other benefits from the grade
4 separation other than mitigating the crash benefit
5 that you didn't include within your calculation?

6 A I do not know if it's an exhibit, but I had
7 done a delayed benefit estimate as well, that
8 estimated the value of driver's times over the length
9 of the design, the length of the project not having
10 to wait for trains.

11 Q You -- with respect to widening Washington
12 Street from two to four lanes from touchdown to
13 touchdown, is it your understanding that any of those
14 costs are included from widening beyond the west
15 touchdown point as indicated in Exhibit A3? And if
16 you need to go up to the exhibit, please do.

17 A Could you reword that?

18 Q The costs for the widening of the roadway
19 from two to four lanes, are any of those costs
20 attributable that we've been talking about to
21 widening the roadway west of the west touchdown
22 point?

1 A No. The reconstruction limit is strictly
2 as called out on the west touchdown limit.

3 MR. GUNNARSSON: I have nothing further, Judge.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Mr. Healey.

5 MR. HEALEY: Just a few questions for Mr. Pine.

6 CROSS-EXAMINATION

7 BY

8 MR. HEALEY:

9 Q With respect to the three public utilities,
10 do you have a recollection of what percentage of the
11 relocation costs that each is going to be paying for
12 the project? For example, the Lake County PW, Public
13 Works, I assume?

14 A I do not know the exact percent. I believe
15 it's 20 percent as a minimum.

16 Q Okay. The CLC JAWA, my recollection is one
17 of the earlier exhibits of the cost item had a
18 substantially greater cost than that for this.

19 Do you know -- is that true and if so,
20 what the reason for the reduction and what their
21 contribution is?

22 A Is the other estimate one of the exhibits?

1 Q In this docket, we've had several versions
2 of the the breakout of the cost items and I'm trying
3 to find it to see if I can find one on-line because I
4 didn't bring it with me today, but that number seems
5 significantly lower than what we've seen in the past.

6 MR. GUNNARSSON: Judge, if I may, there was an
7 earlier -- Exhibit C, if that's what you're
8 referencing, that will be the May 2014 estimate of
9 costs.

10 MR. HEALEY: There you go. That's fine.
11 Thanks.

12 MR. GUNNARSSON: Sure.

13 BY MR. HEALEY:

14 Q That's -- if we look at Exhibit C, the CLC
15 JAWA cost is a little over 233,000 and the current
16 exhibit, U, has a little short of 15,000.

17 Are you aware of why they'll be
18 contributing a lot less than previously suggested by
19 the County?

20 A Well, these figures were developed as part
21 of the -- an agreement between the County JAWA and
22 with this utility, in particular, circumstances in

1 that apportion of their existing utility is within an
2 easement that they have the right to stay within. I
3 believe that they are also being granted a new
4 easement to be relocated within. So as a result of
5 them existing where they are at, by right and not
6 being required to move, I think the County negotiated
7 some sort of cost trade off to have them relocate,
8 but I do not know the details of the breakdown.

9 Q Was any of the change in costs reflected
10 from Exhibit C to Exhibit U the result of a change in
11 the estimate for the actual relocation of the
12 utility?

13 A Not that I'm aware.

14 Q Okay. So the reduction in the cost
15 reflected from Exhibit C to the current break out,
16 which is Exhibit U, to your understanding, was the
17 result of discussions between the County and JAWA
18 relative to legal rights and property right and so
19 on?

20 A I believe so.

21 Q Okay. Can you identify for us on the large
22 Exhibit A blowup the general location of each of the

1 three utilities, if you know?

2 A The Grayslake water main is in blue. It
3 would be relocated right here. All the utilities are
4 using the same corridor. The Grayslake and Lake
5 County Public Works sanitary sewer is in green, which
6 is right next to the blue.

7 Q Okay.

8 A And the Central Lake County JAWA is not
9 shown on the exhibit, but it follows a similar
10 corridor as all the rest of these utilities and going
11 to the north slope.

12 Q Okay. Thank you.

13 If I can turn your attention back to
14 Exhibit J. You had indicated you prepared the
15 exhibit; correct?

16 A Correct.

17 Q And this was an effort to identify and
18 isolate the costs incurred by the project solely as a
19 result of the expansion of Washington Street from two
20 lanes to four lanes?

21 A Yes.

22 Q Okay. And in doing so, you -- if I'm

1 reading this correctly and I'm not the engineer, but
2 if I'm reading it correctly, you've essentially
3 reduced by 24 feet, for example, the length of the
4 spans that the Railroad will sit on to span over the
5 expanding Washington Street?

6 A That's right.

7 Q If I can turn your attention to Exhibit
8 B -- I guess it would be the fourth page of Exhibit B
9 that I'm thinking of -- again, I'm not an engineer,
10 but if I'm reading it correctly, the spans are going
11 to be lengthened not just for the expanded roadways
12 but also for a space in the center of the road that
13 will currently -- that will, as planned, divide the
14 eastbound and the westbound lanes; is that correct?

15 A Yes, the median.

16 Q The median, thank you, if that's what we're
17 going to call it.

18 Do you know at the location of the
19 bridge what the median width is going to be?

20 A I believe it's going to be 4 feet.

21 Q Okay. It also indicates that the spans
22 will have to span the sidewalk and bicycle path that

1 will be installed in the project; correct?

2 A Yes.

3 Q And if I understand, you were not asked to
4 identify the additional costs incurred because of the
5 addition of the median, the sidewalk and the bicycle
6 path to the grade separation, you haven't been asked
7 to estimate those costs?

8 A Correct.

9 MR. HEALEY: By way of reference, your Honor, I
10 raise those questions because I'm looking at the
11 regulation which him talking about the theoretical
12 structure to be built says for the number of lanes on
13 the existing highway, and clearly, the span is being
14 designed for more than -- the reduction, in our
15 opinion, should be for more than simply the addition
16 of the two lanes of traffic, if the theoretical
17 design is designed for the current highway alignment,
18 things like the sidewalk and median and so on
19 shouldn't be included.

20 MR. GUNNARSSON: That's an argument, but
21 certainly --

22 MR. HEALEY: Understood.

1 MR. GUNNARSSON: -- it's a necessary component
2 of the project --

3 MR. HEALEY: Understood.

4 MR. GUNNARSSON: -- the regulation talks about
5 5 percent of project costs. The project doesn't
6 happen without the bike path being brought underneath
7 and the sidewalk, it doesn't happen.

8 MR. HEALEY: And that's fine. I just wanted to
9 give the context for the questions.

10 And I think that's all the questions
11 that I have.

12 JUDGE KIRKLAND-MONTAQUE: Mr. Powers, do you
13 have any questions?

14 MR. POWERS: No questions, your Honor.

15 MR. GUNNARSSON: No follow-up, judge.

16 JUDGE KIRKLAND-MONTAQUE: Okay. You may be
17 excused.

18 MR. GUNNARSSON: We call Mr. Steve Heath.

19

20

21

22

1 STEVEN HEATH,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 EXAMINATION
5 BY
6 MR. GUNNARSSON:
7 Q Mr. Heath, could you state your name for
8 the record and spell your last name.
9 A Yes. Steven Heath. Last name Heath,
10 H-e-a-t-h.
11 Q Mr. Heath, who is your employer?
12 A Patrick Engineering.
13 Q What is your position?
14 A Chief railroad engineer.
15 Q What is your engineering education?
16 A I have a bachelor's of science in Civil
17 Engineering from the university of Illinois.
18 Q And are you licensed?
19 A Yes. I'm a licensed professional engineer
20 in Illinois and Pennsylvania.
21 Q What are your duties in your current
22 position?

1 A I work with the railroad projects that
2 Patrick handles and now currently mainly reviewing
3 plans and giving directions to the staff on the
4 design layouts.

5 Q And how long have you been in your current
6 position, Mr. Health?

7 A I've been with Patrick Engineering
8 19 years.

9 Q And have you been in that position that you
10 currently occupy all 19 years or have you changed
11 positions?

12 A No. Well, I've been doing mainly reviewing
13 the last two years; up until then, I was a project
14 manager for mostly rail projects.

15 Q But throughout your 19 years, would it be a
16 fair statement that your involvement was most often
17 with rail projects?

18 A Yes. Yes. My whole work with Patrick has
19 been with railroad projects, yes.

20 Q Are you familiar with the County of Lake's
21 Washington Street Grade Separation Project?

22 A Yes.

1 Q What is your role with respect to that
2 project?

3 A I work with railroad portion of the
4 project, which included the design of the railroad
5 shoofly for the Railroad.

6 Q And I'd like to direct -- did you have --
7 were you done with your answer?

8 A No, yes, that's fine.

9 Q I direct your attention to Exhibit B in the
10 booklet in front of you, Mr. Heath, could you
11 identify that document?

12 A Yes. Exhibit B is the portion of the plan
13 set for the Washington Street grade separation.

14 Q Did Patrick Engineering prepare those
15 plans?

16 A Yes.

17 Q And did you have involvement in Patrick's
18 preparation of those plans?

19 A Yes.

20 Q Are you familiar with the term "Phase 2
21 Engineering?"

22 A Yes.

1 Q What is your understanding of that term?

2 A Phase 2 engineering is the development of
3 the detailed engineering plans and specifications for
4 the actual construction of the project.

5 Q So Exhibit B, are these the engineering
6 plans for Phase 2?

7 A Yes.

8 Q And you said that they're contract
9 specifications that are also developed?

10 A Yes.

11 Q Are you familiar with the term "Phase 1
12 Engineering"?

13 A Yes.

14 Q And what is your understanding of that
15 term?

16 A That's generally the initial engineering
17 study of the project and defining the overall scope
18 and the approach. And, for instance, on the grade
19 separation like this, whether it's better to take the
20 highway over or under the project and get that
21 concept layout defined.

22 Q And did Patrick Engineering do the Phase 1

1 engineering for the County as well?

2 A Yes, we did.

3 Q And did you have involvement in the Phase 1

4 engineering?

5 A Yes.

6 Q Without the Phase 1 engineering, would

7 there be a Grade Separation Project?

8 A No.

9 Q It's a necessary component of the project?

10 A Yes. That's just the normal stages that

11 any project like this goes through.

12 Q And could you build this project without

13 the Phase 2 plans and specifications?

14 A No.

15 Q Are you familiar with the term "touchdown

16 to touchdown" in the context of a Grade Separation

17 Project?

18 A Yes.

19 Q And what is your understanding of that

20 term?

21 A My understanding, that's the points at

22 which the road profile elevation deviates from the

1 existing to either get over or under the railroad at
2 the grade separation.

3 Q And looking at Exhibit A3, the blowup in
4 front of you, does that accurately show the touchdown
5 to touchdown limits of this project?

6 A Yes.

7 Q Just incidentally, do you happen to know
8 the distance involved in those two points?

9 A Yes. Roughly 1900 and some feet just a
10 little less than 2000, I think.

11 Q From west touchdown to --

12 A Yes.

13 Q -- touchdown?

14 Do the plans call for a temporary
15 roadway?

16 A Yes, they do.

17 Q And why is that?

18 A A temporary road runaround is generally
19 used to maintain the highway traffic so the highway
20 traffic can stay while the new grade separation is
21 being constructed. These projects, construction
22 takes a two-year period usually and the temporary

1 roadway allows the highway traffic route around the
2 construction so the road can stay in operation and it
3 doesn't have to be closed.

4 Q And in looking at Exhibit A3, does that
5 appear to accurately say where the temporary roadway
6 is in purple?

7 A Yes. Yes. The purple route shows the
8 temporary road runaround.

9 Q And referring to Exhibit B, what pages can
10 one find the plans for the temporary roadway or
11 runaround?

12 A It starts here on this Page 6 through about
13 Page 9. It shows the temporary road runaround here.

14 Q And there are also plans for temporary
15 railroad track or --

16 A Yes.

17 Q -- shoofly; is that correct?

18 A Yes.

19 Q And why is that part of the plans?

20 A Again, that's so that the railroad can
21 maintain its operation, again, during the two-year
22 construction period of the bridge so it's a temporary

1 railroad alignment around the bridge.

2 Q Are you familiar with Metra property and
3 station adjacent to the tracks?

4 A Yes, I am.

5 Q And it's indicated on Exhibit A3?

6 A Yes.

7 Q Is the Metra station affected by the
8 project?

9 A Yes. The current Metra platform there for
10 the Grayslake station, actually, is within the limits
11 of the shoofly.

12 Q So -- let me direct your attention to
13 Exhibit Q. It was earlier marked and identified as a
14 Metra's force account estimate.

15 Do you see that?

16 A Yes.

17 Q Is it your understanding that Metra, as
18 part of the project, will be doing some work on this
19 project using their own staff?

20 A Yes. Yes. Metra forces will actually do
21 the construction of the temporary Metra platform
22 which will be along the shoofly so that the commuters

1 can maintain access to the Metra commuter trains
2 through the project.

3 Q Without that platform, construction --
4 would commuters be able to access --

5 A No.

6 Q -- the station?

7 A No. Because the shoofly is within the
8 limits. They won't have access from the existing
9 platform to the shoofly at all.

10 Q I direct your attention to Exhibit H. Do
11 you see that exhibit, Mr. Heath?

12 A Yes.

13 Q Can you identify that?

14 A Yes. This is the description of work
15 functions that the CN Railroad or Wisconsin Central
16 Limited forces will be actually performing.

17 Q Do you know who prepared this exhibit?

18 A I'm not sure.

19 Q But does it accurately state your
20 understanding --

21 A Yes.

22 Q -- Metra -- the CN will do?

1 A Yes.

2 Q And just, briefly, Exhibit I, can you
3 identify that document?

4 A Yes. That's the estimate for the cost of
5 the Railroad's force account work.

6 Q And that's Patrick's own estimate on force
7 account?

8 A No.

9 Q The Railroad's force account?

10 A Right. That came from CN.

11 Q That came from CN?

12 A Yes. That's their estimate.

13 Q Just so I ask you, in reference to
14 Exhibit R that was previously marked?

15 A Oh, yes. Okay.

16 Q That appears to be the actual --

17 A That's the actual CN --

18 Q -- is that accurate?

19 A Yeah, this might have -- yeah, this might
20 have been our -- yes. Exhibit R, is the CN actual
21 estimate that was received from CN.

22 Q Okay. Exhibit R may have been Patrick's

1 own estimate?

2 A Yes.

3 JUDGE KIRKLAND-MONTAQUE: I'm sorry, I didn't

4 hear the answer.

5 BY MR. GUNNARSSON:

6 Q Was that a yes?

7 A Yes.

8 Q Briefly looking at Exhibit V?

9 MR. HEALEY: I'm sorry, did you say "D"?

10 MR. GUNNARSSON: V, as in Victor.

11 MR. HEALEY: Thank you.

12 BY MR. GUNNARSSON:

13 Q This was earlier testified as a spreadsheet

14 from the County DOT showing Phase 1 payments to

15 Patrick Engineering.

16 Do you see that?

17 A Yes.

18 Q And does that figure accurately reflect

19 your understanding of what Patrick has been paid for

20 its Phase 1 Engineering work?

21 A Yes. That's correct.

22 Q And Phase 1 engineering is completed; is

1 that accurate?

2 A Yes.

3 Q The next exhibit, W, again, previously
4 testified as account spreadsheet. This is for Phase
5 2 engineering work from Patrick Engineering. The
6 costs indicated, does that agree with your
7 understanding of Patrick's charges for Phase 2
8 engineering?

9 A Yes.

10 Q There is still some Phase 2 work yet to be
11 done?

12 A Yes. Very little, but...

13 Q So there's not a final figure quite yet?

14 A Yes.

15 Q And, to your knowledge, the figures for
16 costs already incurred in V and W, have they been
17 paid by the County to Patrick?

18 A Yes.

19 JUDGE KIRKLAND-MONTAQUE: I'm sorry, I didn't
20 hear the end.

21 BY MR. GUNNARSSON:

22 Q Have they been paid by the County to

1 Patrick?

2 A Yes.

3 MR. GUNNARSSON: I have nothing further for

4 Mr. Heath.

5 JUDGE KIRKLAND-MONTAQUE: Mr. Healey?

6 MR. HEALEY: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY

9 MR. HEALEY:

10 Q Mr. Heath, with respect to Exhibit V and W,

11 which you have identified as the Phase 1 and Phase 2

12 work on the project, those costs for which Patrick

13 are hired are attributable to the grade separation

14 being installed over the Wisconsin -- under the

15 Wisconsin Central; correct?

16 A Yes, that's right.

17 Q They're not for the Hainesville to Haryan

18 portion of the project?

19 A Yes, that's right. That portion of the

20 project is not included in these exhibits.

21 Q Okay. Was anything done by Patrick to

22 break out the costs that would be included in either

1 Exhibit V or W attributable to the additional lanes
2 of traffic being added at the grade separation?

3 A No, not that I'm aware.

4 Q Was anything done to break out the costs
5 for the additional sidewalks and median of the grade
6 separation?

7 A No, not that I'm aware of.

8 Q Was anything done to break out the
9 additional costs for utility relocations?

10 A No, not that I'm aware of.

11 MR. HEALEY: Okay. Thank you. I have nothing
12 further, your Honor.

13 JUDGE KIRKLAND-MONTAQUE: Mr. Powers?

14 MR. POWERS: No questions, your Honor.

15 MR. GUNNARSSON: No follow-up.

16 JUDGE KIRKLAND-MONTAQUE: All right.

17 MR. GUNNARSSON: Thank you, Mr. Heath.

18 MR. HEALEY: Thank you, Mr. Heath.

19 MR. GUNNARSSON: Judge, our last witness is
20 Mr. Brian Fairwood.

21 JUDGE KIRKLAND-MONTAQUE: Okay.

22 MR. GUNNARSSON: And before we get to

1 Mr. Fairwood, I think we had just a few exhibits that
2 hadn't been admitted yet, F, G, H and I that we've
3 identified and marked for the record and we ask that
4 they be admitted.

5 JUDGE KIRKLAND-MONTAQUE: Any objection?

6 MR. HEALEY: No objection, your Honor.

7 JUDGE KIRKLAND-MONTAQUE: Okay. Petitioner's
8 Exhibits F, G, H and I are admitted.

9 (Whereupon, Petitioner's
10 Exhibit Nos. F, G, H and I were
11 admitted into evidence.)

12 MR. GUNNARSSON: Thank you, Judge.

13 BRIAN FAIRWOOD,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY

18 MR. GUNNARSSON:

19 Q Mr. Fairwood, can you state your name for
20 the record and spell your last name?

21 A Brine L. Fairwood F-a-i-r-w-o-o-d.

22 Q Mr. Fairwood, who is your employer?

1 A TranSystems Corporation.

2 Q What is your position with TranSystems?

3 A Currently vice president with the firm.

4 Q What is your educational background?

5 A I have a bachelor's of science degree in

6 Civil Engineering from Marquette University.

7 Q Are you licensed as an engineer?

8 A No.

9 Q What are your duties in your current

10 position?

11 A Currently, I'm an account client manager

12 with TranSystems.

13 Q And what is involved in being a client

14 manager for TranSystems?

15 A I provide consulting services related to

16 transportation engineering for our client's projects.

17 Q And how long have you been in that

18 position?

19 A I've been employed by TranSystems for 21

20 years.

21 Q And in that position for 21 years?

22 A No. In this position for approximately

1 seven years and previous number of roles within the
2 company related to transportation engineering.

3 Q Are you familiar with the County of Lake's
4 Washington Street Grade Separation Project?

5 A Yes.

6 Q What are your duties with respect to that
7 project?

8 A TranSystems is performing in a program
9 management role and -- particularly to myself, I am
10 working with the County to assist them with the
11 preparation of their agreements with a number of the
12 agencies that were involved with the project.

13 Q That -- and does that go for all the
14 projects that TranSystems currently has with the
15 County?

16 A To a certain extent. I didn't prepare all
17 of the agreements that the County had with all of
18 their Challenge Bond Projects, but I have been
19 involved with numerous agreements.

20 Q And as far as your involvement in preparing
21 agreements for this project, the Grade Separation
22 Project --

1 A Mm-hmm.

2 Q -- are those -- what are the nature of
3 those agreements that you were involved in preparing?

4 A Primarily for the Grade Separation Project,
5 I was involved with preparing the draft petition
6 for -- the draft ICC petition, I should say, and
7 developing Exhibit C, which is the cost breakdown for
8 the various stakeholders.

9 Q Other agreements that you were involved in
10 for this project?

11 A To a smaller or lesser extent, some of the
12 agreements with the communities, although I believe
13 it was, in this instance, Grayslake.

14 Q Okay. Is that with respect to what aspects
15 of the project?

16 A Just the -- some of the language within the
17 agreements themselves and helping our staff prepare
18 initial drafts for final review and approval by the
19 County for their use with negotiating with these
20 various agencies.

21 Q In order to effectuate the project?

22 A Yes.

1 Q I'd like to direct your attention to what's
2 been previously marked as Exhibit C. You have it in
3 front of you.

4 A Mm-hmm.

5 Q That's a May 2014 breakdown of various cost
6 items for this project; is that correct?

7 A Yes.

8 Q And did you prepare that exhibit?

9 A Yes.

10 Q And at the time was that exhibit accurate
11 in terms of the information you had available to you?

12 A Yes.

13 Q Is there a more current estimate of costs?

14 A Yes.

15 Q And directing your attention to Exhibit U,
16 can you identify that exhibit?

17 A Yes.

18 Q And is that the more current estimate of
19 costs you just mentioned?

20 A Yes.

21 Q Did you prepare this exhibit?

22 A Yes.

1 Q And I'd like to just go through these items
2 and just ask you a couple of brief questions about
3 each.

4 Program management, what does that
5 refer to?

6 A That refers to services that have been
7 provided by TranSystems specific to the Washington
8 Street CN Underpass Project.

9 Q In just a little bit we'll into how you
10 calculated that figure, but let's move on to Phase 1
11 engineering. Where did you obtain that figure?

12 A Lake County provided me with that figure.

13 Q And would that also go for Phase 2
14 engineering?

15 A Yes.

16 Q And right-of-way acquisition?

17 A Yes.

18 Q Wetland banking?

19 A Yes.

20 Q The construction estimate?

21 A Construction estimate was developed by
22 Patrick Engineering.

1 Q And how was that estimate developed? What
2 went into developing that construction estimate?

3 A I would defer to Mike Pine with Patrick
4 Engineering.

5 Q So you got the figure from Mike Pine?

6 A Yes.

7 Q The -- there's a Footnote No. 3 --

8 A Yes.

9 Q -- for this exhibit and it references
10 constructions and then in parentheses, with
11 exceptions of costs associated with roadway widening
12 and substructure widening for future second track.

13 Do you see that?

14 A Yes.

15 Q Okay. What is the reference to
16 substructure widening for future second track?

17 A That are the costs associated with
18 ultimately having additional track constructed at
19 this location at the request of the CN Railroad.

20 Q And is that the \$1.5 million that is
21 referenced just above that --

22 A Yes.

1 Q -- in that same footnote?

2 So did you take that figure out of the

3 figure for the costs in reference to this Exhibit U

4 for the construction?

5 A Those numbers were taken out of the cost

6 breakdown for the CN Railroad in determining their

7 final participation number of 3,057,242.

8 Q Okay. Okay. And is that the same with the

9 costs associated with roadway widening?

10 A Yes.

11 Q So that was taken out of the table and

12 below the costs; is that correct?

13 A Correct. That was -- that was solely taken

14 out of the costs attributed to the CN number that you

15 see there.

16 Q Okay. And the costs -- the CN costs, the

17 \$3 million -- the 3 million and some change --

18 A Mm-hmm.

19 Q -- cost estimate which you're referring to?

20 A Yes.

21 Q That includes the 1.5 million; correct?

22 A Correct.

1 Q So what I'm asking you is, with respect to
2 that Footnote C, it says, Construction and then in
3 parentheses, with the exception of costs associated
4 with roadway widening and substructure widening for
5 future second track, was that -- that's in reference
6 to the CN's 5 percent contribution; correct?

7 A Correct.

8 Q So in calculating here, the CN's 5 percent
9 contribution, did you take out of that figure that
10 you're applying the 5 percent to the costs associated
11 with roadway widening and substructure widening for
12 future second track?

13 A Yes.

14 Q And the second part of that, the
15 substructure widening is the 1.5 million; right?

16 A Correct.

17 Q You didn't apply 5 percent to that?

18 A Correct.

19 Q And the cost of the roadway widening, did
20 you get that figure from Patrick Engineering?

21 A Yes.

22 Q And, in particular, Mike Pine?

1 A Yes.

2 Q Okay. I'd like to direct your attention to

3 Exhibit J.

4 Do you see that?

5 A Yes.

6 Q And it says the total costs at the bottom.

7 Do you see that figure?

8 A Yes.

9 Q Was that the figure you pulled out of the

10 5 percent calculation of the CN's contribution?

11 A Yes.

12 Q All right. So the 5 percent that you have

13 included for the CN's contribution of project costs

14 did not include 5 percent of the costs of the

15 substructure widening, which is 1.5 million; is that

16 right?

17 A Correct.

18 Q Nor the costs estimated by Patrick for the

19 incremental costs from two to four lanes of 1.11 to

20 1.5 --

21 A Correct.

22 Q -- million?

1 And then the remaining amounts then
2 for the CN's contribution, the 3,057,242 includes
3 that 5 percent with exception of those costs you just
4 described and then the 1.5 million contribution; is
5 that right?

6 A Yes.

7 Q I'd like to direct your attention to --
8 let's stay, just briefly, on Exhibit U. In
9 construction there are costs included for utility --
10 public utility relocation; is that right?

11 A Yes.

12 Q And that's included within the construction
13 estimate figure?

14 A I believe so.

15 Q In that table that is prepared here for the
16 various contributions, do you see the Lake County
17 Public Works and the CLC JAWA, C-L-C J-A-W-A, in
18 Grayslake.

19 Do you see those items?

20 A Yes.

21 Q So there are three items for contributions
22 by these public utilities; is that correct?

1 A Yes.

2 Q Do those contributions represent the entire
3 cost of the utility relocation?

4 A I do not know.

5 Q How did you get those figures?

6 A Those figures were provided to me by
7 engineering staff at TranSystems and also the County
8 related to the agreements that were prepared --
9 arrangement agreements that were prepared between
10 those agencies and the County.

11 Q Did you hear the earlier testimony about,
12 possibly, a 20 percent contribution figure --

13 A Yes.

14 Q -- that I believe Mr. Pine referenced?

15 A Yes, I heard that.

16 Q Do you think that's roughly accurate in
17 terms of how these calculations were made or do you
18 know?

19 A I'm not sure at this point.

20 Q Okay. Just to clear up one item that came
21 up with an earlier witness, you see the CLC JAWA
22 contribution?

1 A Mm-hmm.

2 Q Exhibit U of 14,802?

3 A Yes.

4 Q And comparing to Exhibit C --

5 A Yes.

6 Q -- it has for that same entity 233,506.

7 Do you see that?

8 A Yes.

9 Q Do you know what accounts for the reduction

10 in that figure?

11 A No.

12 Q But the figure in Exhibit U, that's the

13 more accurate figure as far as you understand --

14 A Those are --

15 Q -- contribution?

16 A -- these numbers represent the latest costs

17 for each of these items.

18 Q I'd like to direct your attention to

19 Exhibit P, just very briefly.

20 That was -- you testified earlier as

21 the beginning spreadsheet for the Phase 3 engineering

22 costs?

1 A Yes.

2 Q V3 is the contractor; is that correct?

3 A Yes.

4 Q What is your understanding of what Phase 3
5 engineering entails?

6 A My understanding is -- for Phase 3
7 engineering, described here entails overseeing the
8 construction of the underpass improvements related to
9 this project.

10 Q That's the engineer that worked with the
11 contractor during construction?

12 A Yes.

13 Q I'd like to direct your attention to
14 Exhibit S.

15 Can you identify that document?

16 A Yes.

17 Q What is it?

18 A It is an e-mail that I sent to the County
19 to describe the costs associated with our program
20 management services for this project.

21 Q And how was that figure, which is indicated
22 at 380,000 arrived at?

1 A It was determined through our overall
2 contract with the County. We had individual line
3 items within our scope attributed to each of the
4 Challenge Bond Projects that we were working on.
5 Some of those costs are allocated with this
6 particular project and there were general overall
7 tasks associated with our assignment as well that
8 contribute to that number.

9 Q Is TranSystems' contract a contract based
10 on the amount of time the different personnel devoted
11 to different projects?

12 A Yes. It's at an hourly based contract.

13 Q So the 380,000 is that then based on the
14 hours that were allocated by TranSystems staff to
15 this particular grade separation project?

16 A Part of that number was derived by hours
17 directly for this project and other tasks related to
18 overall program management services for the County
19 that are also related to this project.

20 Q So any amount of this 380,000 not related
21 to work on this project by TranSystems?

22 A Not to my understanding.

1 Q Okay. I direct your attention to
2 Exhibit T. You earlier testified it's a spreadsheet
3 of the payments to TranSystems. It references
4 contracts amount.

5 Do you see that?

6 A Yes.

7 Q Is that consistent with your understanding
8 of what TranSystems has been paid for its various
9 projects with the County?

10 A To my knowledge, yes.

11 Q Exhibit Y. Can you identify that exhibit?

12 A Yes.

13 Q What is that exhibit?

14 A This exhibit was prepared by our program
15 manager to identify costs associated with our overall
16 contracts with the County to provide program
17 management services for their Challenge Bond Program.

18 Q And as different projects in Line 6, it's
19 highlighted --

20 A Line 6 identifies this particular project
21 and the costs associated with that.

22 Q Has this project been bid out for

1 construction?

2 A There was a bid last month, yes.

3 Q I'd like to direct your attention to
4 Exhibit X.

5 Can you identify that document?

6 A Yes. This is a bid tab from IDOT, bids
7 received on November 21st, 2014.

8 Q Is this a publically available document?

9 A Yes, it is on IDOT -- currently it's on
10 IDOT's Web site.

11 Q And did you obtain this document?

12 A Yes.

13 Q Do you know if the bid has been accepted by
14 IDOT yet?

15 A The bid has not been accepted yet.

16 Q So a contract has not yet been signed?

17 A A contract has not been awarded by IDOT and
18 the contract has not been signed.

19 Q So I take it, it would be a fair statement
20 then, your construction cost estimate put into
21 Exhibit U could change obviously based on the actual
22 costs resulting from the contract and the performance

1 of the contract; is that correct?

2 A Yes.

3 Q And just also very briefly, Exhibit BB --

4 A Yes.

5 Q -- I just ask if you could identify that

6 that's the overall contract that TranSystems has with

7 the County --

8 MR. HEALEY: I'm sorry?

9 BY MR. GUNNARSSON:

10 Q -- or program management -- is Exhibit BB,

11 the contract that TranSystems has with Lake County

12 under the Challenge Bond Program that you already

13 testified to?

14 A Yes.

15 MR. GUNNARSSON: I have nothing further, Judge

16 except I ask to -- you know, I think I had asked to

17 admit from J through BB, but we hadn't had testimony

18 on X or Y until Mr. Fairwood. So just to clarify for

19 the record, I'd ask that X and Y be admitted.

20 JUDGE KIRKLAND-MONTAQUE: X and Y are already

21 admitted.

22 MR. HEALEY: I think they already are.

1 MR. GUNNARSSON: Yeah, just to clarify. Thank
2 you, Judge. Nothing further.

3 JUDGE KIRKLAND-MONTAQUE: Mr. Healey?

4 MR. HEALEY: I have no questions for the
5 witness. I thank him for his time.

6 MR. POWERS: No questions.

7 MR. GUNNARSSON: No further witnesses, Judge.

8 JUDGE KIRKLAND-MONTAQUE: All right. Any
9 witnesses from you, Mr. Healey?

10 MR. HEALEY: I have no witnesses. We'd
11 appreciate an opportunity to do sort of a closing
12 summary --

13 JUDGE KIRKLAND-MONTAQUE: Okay.

14 MR. HEALEY: -- if Mr. Powers didn't have
15 anything else.

16 JUDGE KIRKLAND-MONTAQUE: Did you have any
17 questions?

18 MR. POWERS: No questions.

19 JUDGE KIRKLAND-MONTAQUE: All right. Well,
20 before I get to the closing arguments, pursuant to
21 Illinois Administrative Code Section 200.500, I am
22 going to call Mr. Powers as a witness.

1 (Witness sworn.)

2 DANIEL POWERS,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY

7 JUDGE KIRKLAND-MONTAQUE:

8 Q Please speak up so the court reporter can
9 hear you.

10 A Sure.

11 Q Please state your name for the record and
12 spell your last name.

13 A Daniel Powers, P-o-w-e-r-s.

14 Q And who do you work for, Mr. Powers?

15 A Illinois Commerce Commission.

16 Q And what's your position at the Commerce
17 Commission?

18 A Senior railroad safety specialist.

19 Q And how long have you been in that
20 position?

21 A 15 years.

22 Q And are you assigned as the Staff to this

1 particular docket?

2 A Yes.

3 Q So you're familiar with the plans and
4 proposals that have been prepared by the petitioner?

5 A Yes.

6 Q Okay. In your 15 years at the Commission,
7 have you ever been involved in a case like this that
8 raised the question of what costs should be allocated
9 in the 5 percent of federal regulation?

10 A No.

11 Q In your experience at the Commission, have
12 you been involved in other cases similar to this case
13 in which there is a grade separation to this
14 magnitude that we're seeing today?

15 A Yes.

16 Q How often? How many other -- if you could
17 guesstimate?

18 A Well, as far as ones that involved federal
19 funding, I can't recall if I've actually been the
20 Staff assigned to that, but other Staff have been.

21 Q Okay.

22 A I'd say at least one or two others that may

1 or may not have involved federal funding.

2 Q Okay. And you said that you've never --
3 this issue has never been raised before in any of
4 your cases?

5 A No, your Honor.

6 Q In the other cases that you might have or
7 even if you're aware of other Staff involvement in
8 this federal funding case, could you recall how the
9 parties allocated the 5 percent under the federal
10 regulation to the railroad?

11 A From past research and experience, it's
12 usually 5 percent of the total project cost from
13 touchdown to touchdown assigned to the Railroad.

14 Q So you're saying it's all inclusive of
15 costs that are within touchdown to touchdown?

16 A Yes, your Honor.

17 JUDGE KIRKLAND-MONTAQUE: Okay. Does anyone
18 else have any questions to Mr. Powers?

19 MR. GUNNARSSON: No follow-up.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. HEALEY:

4 Q Just to confirm what you're saying,
5 Mr. Powers, is that as far as you know, no one has
6 ever raised this issue before?

7 A Not to my knowledge, no.

8 MR. HEALEY: Thank you. I have nothing
9 further.

10 JUDGE KIRKLAND-MONTAQUE: That's all. Thank
11 you, Mr. Powers.

12 Okay. So I will -- I will allow the
13 parties to make a closing statement, if you'd like.

14 Go to ahead, Mr. Gunderson.

15 CLOSING ARGUMENT

16 BY

17 MR. GUNNARSSON:

18 Just following up on what Mr. Powers
19 testified to. I think that's consistent with the
20 County's position, which is the regulation -- I think
21 the regulation in it's substance clearly states --
22 really, the operative language is that B3 of the

1 regulation, your Honor, taking part of this
2 sentence -- the Railroad's share of the project costs
3 shall be 5 percent, no ifs ands or buts. The
4 reference in C1 says the required -- the required
5 Railroad share under B3 -- which I just mentioned --
6 shall be based on the costs for preliminary
7 engineering, right-of-way and construction within the
8 limits described below and -- described below, I
9 would argue -- argued in our brief, but that that's
10 the touchdown to touchdown limits. That's the limits
11 that's being referenced in C1 under description.

12 Preliminary engineering, right-of-way
13 and construction are descriptive of what a project
14 is. There are -- you have three stages. You've got
15 the design stage, the fleshing out the project. What
16 should be the project entail? How do we design it?
17 What are the specifications? All of which -- and I
18 think, actually, elsewhere in the regulatory scheme,
19 your Honor, it is preliminary engineering actually is
20 defined and I'll relate it here, it's in 646.204,
21 your Honor, so the same subpart where this regulation
22 is found it says that preliminary engineering is the

1 work necessary to produce construction plans,
2 specifications and estimates to the degree of
3 completeness required for undertaking construction
4 thereunder including locating, surveying, designing
5 and related work. It's an all-inclusive preliminary
6 cost idea of putting a project together and designing
7 the project.

8 Right-of-way is self-evident, that's
9 acquiring the -- I don't think there's any dispute
10 about what right-of-way acquisition is. There's a
11 dispute, evidently on its application here and then
12 construction is the building.

13 And those are the three phases of a
14 project like this, designing it and conceiving it --
15 designing it, getting the rights-of-way needed and
16 then building it. So it's descriptive of what a
17 grade separation project is. The limits are the
18 touchdown to touchdown limits. The Railroad's share
19 is 5 percent of project costs.

20 The Railroad takes the position as
21 stated in Mr. Healey's brief, they dispute the
22 program management fee, which we have testimony from

1 Mr. Fairwood about; the Phase 2 engineering costs
2 those are the plans and the specifications, they
3 dispute that, I don't see how that can possibly be
4 disputed because the project doesn't occur without
5 it. Phase 3 engineering for a complex project, the
6 testimony is, and has been, that you really need an
7 engineer working with the contractor to be sure it is
8 built according to plans and address matters that
9 arise during the construction of any complex project
10 of this nature.

11 Utility relocation, that's also
12 contested. The project doesn't happen without
13 utilities being relocated. You can't have the grade
14 separation. You can't leave the utilities floating
15 in the air. They have to be relocated, just as you
16 have to have the plans, just as you have to have the
17 engineer working with the contractor.

18 The Metra force account work is also
19 contested, but that is necessary to the project
20 because the Metra's platform is impacted by, actually
21 the, temporary railroad track, which is necessary to
22 keep trail track moving just as right-of-way is

1 necessary for, among other reasons, not only the
2 grading because of the change in slope of the roadway
3 to bring it down underneath the tracks, but to
4 maintain traffic on Washington Street, it's a very
5 busy east-west thoroughfare in Lake County. You
6 can't have the project without maintaining traffic,
7 just as you couldn't have the project without
8 maintaining the rail traffic. So the shoofly is
9 necessary, that results in an impact on the Metra
10 platform. You've got to keep the station in
11 operation. If you can't keep that station in
12 operation, you don't have a project. If you can't
13 keep the traffic on Washington Street moving, you
14 don't have a project. You don't have utility
15 relocation, there's no project; you don't have it
16 without the plans, you don't have it without the
17 engineer's work. All of this are necessary elements
18 of this project.

19 Now, that 5 percent figure, as I noted
20 in our brief, that's a figure that was developed by
21 the Secretary of Transportation to identify what is a
22 Railroad's benefit and responsibility for a grade

1 separation project. So the question is whether there
2 is a benefit to the Railroad as there is benefit to
3 the public? The Secretary chose that under the
4 enabling legislation as the amount the Railroad
5 should pay because it realizes a benefit from it --
6 from the project. The legislation doesn't talk about
7 only paying a percentage of this benefit. Allowing
8 the Secretary to choose and select what that
9 contribution should be already incorporates a
10 discount for the Railroad -- a substantial discount,
11 they pay 120 of the cost because it's presumed that
12 not all of the costs benefit the Railroad; but
13 certainly a big share of the costs do benefit the
14 Railroad, the regulation says 5 percent. And, again,
15 it's 5 percent, no if ands or buts, 5 percent of the
16 project costs.

17 The testimony, I think, supported the
18 necessity of each of these items in Exhibit U. As I
19 indicated at the outset and I think we also
20 stipulated during the course of this, it should be
21 5 percent of the actual costs. So to extent that
22 costs have already been incurred and paid should --

1 for this project, it should be 5 percent of those
2 costs. To the extent that right now what we have in
3 Exhibit U are merely estimated costs such as the big
4 line item, which is the construction costs, estimated
5 in Exhibit U as being 23 million -- it looks like the
6 bids are going to come out a little below that --
7 construction may be a little more or a little less;
8 but whatever it ends up being, it should be 5 percent
9 of the actual figure.

10 So at the end of the project, there
11 should be some sort of reconciliation to ensure that
12 the Railroad pays 5 percent of the project costs, no
13 more and no less. That's what the regulation says is
14 its share. That's what they're mandated by law to
15 pay, I argue and, really, that's an attempt at
16 realizing what the Railroad also benefits from this,
17 as I argued at the outset, railroads and highways
18 exist together. The problems caused to traffic and
19 the dangers from rail crossings are as much due to
20 the presence of the highways and the road traffic and
21 the increasing road traffic as to the presence of the
22 railroads. There's a joint responsibility for

1 alleviating problems and this is one -- a big project
2 in Lake County to alleviate a big problem in that
3 County, a delay property and a big safety problem.
4 The Railroad is obliged to pay a share of that.

5 Lastly and, again, following up on
6 what Mr. Powers alluded to, no -- I think it's one
7 thing that Tom and I agree on is -- we have found in
8 all of the national jurisprudence I've looked and
9 looked, no contested case decision under this
10 regulation applying the 5 percent; but I think there
11 is prior -- there are prior ICC orders that are by
12 agreement that Mr. Powers alluded to -- that that
13 5 percent of the project cost from touchdown to
14 touchdown it's County's position has been
15 incorporated in other ICC agreed orders on these
16 projects. I mentioned two in the closing on my
17 brief, the City of Galesburg versus BNSF Railway,
18 T10-0048 and the County of DuPage versus BNSF
19 Railway, T08-0006.

20 In the Galesburg case, it was
21 5 percent of the project cost that included
22 preliminary engineering, it included land

1 acquisition, utility relocation, that was a contested
2 item there, 5 percent; construction engineering was
3 also included as a cost item, that's our Phase 3
4 construction costs and then, of course, the
5 construction. All of that was paid at a 5 percent
6 level without pulling out any isolated items.

7 In the DuPage case, the same thing, is
8 really 5 percent of the total of the project costs,
9 included items -- again, contested here -- relocation
10 of public utilities and evidently in that case, there
11 were -- appear to be railings for the walkway and
12 that's another cost item that the Railroad paid the
13 5 percent share to.

14 So in closing, your Honor, I think the
15 authority supports 5 percent of all project costs
16 from touchdown to touchdown. I think the
17 Commission's agreed order precedent supports it. I
18 think the regulation says it. I think the regulatory
19 scheme agrees with that, all of which supports the
20 County's position that the Railroad should pay 5
21 percent of the actual contractor -- construction
22 costs from touchdown to touchdown for this grade

1 separation project.

2 Thank you.

3 JUDGE KIRKLAND-MONTAQUE: Mr. Healey?

4 MR. HEALEY: Thank you, your Honor.

5 CLOSING ARGUMENT

6 BY

7 MR. HEALEY:

8 I think, first of all, the Railroad

9 would like to than Gunnar and Lake County. We've

10 enjoyed working on this project --

11 MR. GUNNARSSON: Same here.

12 MR. HEALEY: -- and we look forward to

13 finishing it with you as well as the one in Rollins.

14 The issues you have in front of you

15 today I think were established from two attorneys who

16 did their best to find things and one, obviously,

17 very seasoned Staff member from the Commission

18 indicate these issues haven't been considered before

19 and maybe we are writing from a blank slate, but that

20 doesn't mean that the fact that Railroads have paid

21 these costs in the past somehow has modified what's

22 the clear language of the regulation.

1 Mr. Gunnarsson has, in his
2 questionings and in his closings has repeated
3 assertions about what is necessary for the project.
4 I don't think "necessary" is a part of the
5 regulation. To read the regulation as the County
6 would you have read it, they could have stopped at B
7 and simply left it with the all project cost and,
8 yet, Section C has a variety of terms and limitations
9 that I think need to give you pause and say, Wait a
10 minute, there are a bunch of limits on what project
11 costs are included in the Railroad allocation.

12 Explicitly C1 talks about limiting
13 it -- the Railroad's participation to the costs of
14 the grade separation for the numbers of lanes of the
15 existing highway. Now, obviously, Mr. Gunnarsson has
16 acknowledged that and the County has made reasonably
17 good efforts to try to exclude the costs that are
18 attributable to the fact that the roadway is going
19 from two lanes to four; but that language right there
20 tells you the intent isn't simply to say "touchdown
21 to touchdown" for the project, there is a limitation
22 on it to say you know, what it's going to have to be

1 smaller than that; the Railroad's participation is
2 not going to include those costs.

3 C1 also talks about the theoretical
4 highway profile from touchdown to touchdown, and,
5 again, County has done a reasonably good job, it
6 would appear, with trying to breakout costs incurred
7 by the project outside of that. My point in raising
8 it is not that the County has ignored the language,
9 but simply to say that there are limitations in
10 Section C. Section C at the beginning talks about
11 the preliminary engineering right-of-way and
12 construction costs. If all project costs were
13 needed, what's the need for having language like that
14 in there for them to delineate the particular
15 elements of costs that are included in the project?

16 And I think, perhaps, most troubling
17 from the County's position is C2 where it talks where
18 another facility, such as a highway or a waterway
19 needs to be bridged. Those costs also have to be
20 included from the theoretical structure.

21 I think the County's approach to the
22 project is, figure out where the touchdown lanes are

1 and acknowledgement for the expansion of the road and
2 everything else is included and the regulation is
3 telling you something different. The regulation is
4 telling you that were building a theoretical bridge
5 here on which to apply the costs. They have to build
6 an actual bridge and it will be concrete and metal
7 and, et cetera, and I'm sure it will look beautiful,
8 but that doesn't mean the Railroad is going to pay
9 for all of that. The regulation is limiting you from
10 paying for all of the items within the touchdown
11 limit.

12 We've talked already about the million
13 and a half dollars that the Railroad has agreed to
14 contribute for extra width abutments to accommodate
15 an additional span. Just by way of background, the
16 regulation has a provision for including those costs
17 in the project if the Railroad has, what we'll call
18 them, immediate or impending plans to add a second
19 track. We don't. We think someday. This line is
20 our primary connection between everything from here
21 down to the Gulf and Western Canada. So it's -- it's
22 likely that at some point it will be a double track,

1 but, you know, we've acknowledge we don't have plans
2 in the budget, it's not in our about three-year
3 budget forecast, so we're paying 100 percent of that
4 cost.

5 We've also talked about the fact that
6 the County has agreed that the costs of making the
7 bridge spans longer because of the additional lanes
8 needs to be excluded from the costs that the
9 application of the 5 percent would apply to.

10 Again -- but I think these are just
11 sort of indicative of the things that need to be
12 excluded and it's not -- we haven't enumerated the
13 whole thing.

14 Mr. Giertych talked about the fact
15 that the project incorporates a new sidewalk on one
16 side and a new 10-foot bicycle path on the other.
17 Those aren't part of the existing grade separation
18 now and the regulation is specifically saying that
19 we're limiting the application of the costs to the
20 theoretical highway for the existing number of the
21 lanes of the highway. If the County had decided --
22 just by way of an example to prove the point -- what

1 if there's going to be a 40-foot sidewalk over on the
2 side and now the span has to be much longer and
3 thicker and so on, is the Railroad going to be paying
4 5 percent of that because the County has decided to
5 introduce that additional element? The same with the
6 bike path on the other side, Mr. Giertych also said
7 that was new for the project. Why is the Railroad
8 paying for 5 percent of that when the regulation
9 specifically says we're paying for the span that
10 would require for this theoretical highway profile
11 for the number of lanes of an existing highway.

12 There's three public utilities that
13 are being relocated primarily at the cost of the
14 project. Those seem to be very clearly another
15 facility in reference to C2 such as a highway or
16 waterway that's outside the scope of the project. I
17 can read you C2 here where a grade crossing -- I'm
18 sorry, where another facility such as -- such as a
19 highway or waterway requiring a bridge structure is
20 located within the limits of the grade separation
21 project, the estimated cost of a theoretical
22 structure and approaches, as described above in C1,

1 to eliminate the Railroad highway grade crossing
2 without considering the presence of a waterway or
3 highway. You recall that the regulation isn't saying
4 "waterway" or "highway" is the exclusive limit of
5 items that would be excluded from the application of
6 the Railroad's costs. It says, Other facilities,
7 such as this, require relocation.

8 Again, the cost application is going
9 to the 5 percent of the theoretical structure. I
10 cannot see a basis for saying, well, we need to
11 exclude if there's a road next to the railroad that
12 needs to expand, we need to exclude those costs or if
13 the railroad happened to be built next to a creek.
14 It says very clearly we exclude those costs because
15 it's a waterway and, yet, somehow if there is a
16 utility in there, somehow the Railroad is going to
17 pay 5 percent of that cost.

18 Again, C2 is talking about where
19 another facility such as highway or a waterway. It
20 doesn't say that's the limiter. It says when those
21 additional items out there, those are to be excluded
22 from the applicable of the Railroad's cost

1 contribution.

2 I think the Metra platform work is
3 also another example. We are not Metra. Metra is
4 not us, it's a separate governmental tee. You know,
5 the notion that it's necessary to relocate the Metra
6 facility for the project doesn't mean the Railroad
7 pays for it. It would be necessary to span a
8 waterway if it were out there; but that doesn't mean
9 the Railroad pays for it. The regulation is telling
10 you the application of this 5 percent is not to all
11 of these project costs, we need to exclude the items
12 that are not otherwise there attributable to the
13 construction of a grade separation over the Railroad.

14 The only other point I guess I would
15 raise is two-fold. One I, again, point out that
16 Mr. Powers' testimony, while I am absolutely certain
17 he's correct on the points he raises, is limited to
18 the fact that the issue hasn't come up. He's not
19 testified that it's come up and it's been rejected or
20 something under those lines. So I understand nobody
21 may have raised this question before, but I think
22 there's a very valid basis on the regulation for

1 raising the questions.

2 And the last point I'd raise is -- I
3 raised it in the brief -- and I do think that to the
4 extent your Honor is deciding the issue, the County
5 should be seen as having the burden of proof on this
6 case. It's their petition. They're the ones coming
7 forward asking that costs be attributable to us and I
8 think that it's only fair in that instance that they
9 be seen as having the burden of proof on issues.

10 I thank you for your patience this
11 morning and this afternoon I guess, too.

12 JUDGE KIRKLAND-MONTAQUE: Thank you. Okay.
13 Mr. Powers, did you want to add anything on behalf of
14 Staff?

15 MR. POWERS: As a -- Staff versus a witness.

16 JUDGE KIRKLAND-MONTAQUE: As Staff versus a
17 witness, not a witness; but as a Staff member.

18 MR. POWERS: Okay.

19 STATEMENT

20 BY

21 MR. POWERS:

22 As Staff for the Commission, on the

1 record, we concur with the County's position and it's
2 case and would like to reference one more docket that
3 was recently approved by the Commission, that's
4 T13-0051 and there is some specific language included
5 in that and it was an agreed case, but if I could,
6 read it into the record, it pretty much sums up
7 our -- Staff's position.

8 JUDGE KIRKLAND-MONTAQUE: Go ahead.

9 MR. POWERS: It's a footnote under the Cost
10 Division Table included in that docket and it's
11 Footnote No. 7: 5 percent of eligible project costs
12 associated with a new bridge, touchdown to touchdown
13 in parentheses, in accordance with 23 CFR 646.210,
14 classification of projects and Railroad share of the
15 cost, period. Final amount contingent upon
16 construction bids, right-of-way costs, Railroad force
17 account work and actual costs.

18 So Staff concurs with that statement.
19 And as an aside, this is a personal statement, I
20 don't know that this is the venue to decide the
21 5 percent rule. I don't know that it should be a
22 precedent setter, but that's just a personal opinion.

1 MR. HEALEY: I'm not sure you're going to have
2 a choice on that one, your Honor, but I'm not sure
3 you will.

4 Can you give me the docket again?
5 It's T13...

6 MR. POWERS: Sure. 0051.

7 MR. HEALEY: 51, thanks.

8 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you,
9 Mr. Powers.

10 Is that the all the evidence presented
11 today?

12 MR. GUNNARSSON: Your Honor, that's all the
13 evidence.

14 MR. HEALEY: And I have nothing further, your
15 Honor. Thank you.

16 JUDGE KIRKLAND-MONTAQUE: Okay. Well, I think
17 we mark this heard and taken.

18 (Whereupon, Petitioner's Exhibit
19 Nos. A through D and F through BB
20 were marked for identification.)
21 (Heard and taken.)
22